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ABSTRACT

As the first stage of a study of segregation in housing and education in the Twin Cities of Minneapolis and Saint Paul (Minnesota), a review was conducted of national and local reports on the current status of housing and education segregation in the United States and the Twin Cities. A later phase of the project will analyze policy options available to improve housing and education in both cities. A review of national conditions shows that economic and racial segregation persists in the United States. Location of one's residence affects access to many opportunities, including good schools. The Twin Cities area shares many of the problems of other metropolitan areas, where educational and residential problems abound for minorities and the poor. Several policy options have been implemented to address these problems, but the results are mixed. Enhancing economic and housing opportunities of racial minorities and the poor requires suburban acceptance, support, and cooperation in treating inner-city poverty and racial segregation as problems of the entire area rather than the urban core alone. An appendix contains maps of the Twin Cities and its metropolitan area. (Contains 299 footnotes, 3 tables and 13 maps.) (SLD)

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Examining the Relationship between Housing, Education, and Persistent Segregation

A Preliminary Report
The Institute on Race and Poverty

Funding Provided by

The McKnight Foundation

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Preface

The economic situation of the Negroes in America is pathological. Except for a small minority enjoying upper or middle class status, the masses of American Negroes, in the rural South and in the segregated slum quarters in Southern and Northern cities, are destitute. They own little property; even their household goods are mostly inadequate and dilapidated. Their incomes are not only low but irregular. They thus live from day to day and have scant security for the future.[1]

An African American reporter wrote in her journal:. I'm faced with the fact that since I moved to Minnesota I've become ever so self-conscious of my Blackness. It preoccupies my thoughts. It affects the way I relate to just about everyone I meet. It makes me analyze situations and experiences that two and a half years ago I would have dismissed without a second thought. More and more I feel that it's us against them.

Originally written in 1944, Myrdal's *An American Dilemma* chronicled the fate of blacks in American society. It described a racially divided America, finding that blacks suffered not only from white prejudice but also numerous other economic, social, and political maladies. Seeking to isolate the single reason for black poverty, Myrdal rejected the search for any single cause, arguing instead that racism, economic deprivation and other factors work together cumulatively to create black poverty and isolation.[2] Since 1944, other studies have documented the racial and economic isolation of blacks, noting the interrelationship between race and poverty that has created distinct worlds and cultures for blacks and whites, even in Minnesota and the Twin Cities.[3]

This report similarly hypothesizes that there is a connection between race and poverty that cumulatively operates to have an adverse impact upon the location and concentration of minorities in the United States. It examines the relationship between race and income in America, focusing specifically upon the connections between housing and education policies in the Twin Cities metropolitan region. While this report is tentative and the findings are not complete, evidence suggests that low income and minority populations are increasingly segregated in America's urban cores, including that of Minneapolis and Saint Paul. As a result, low income minority populations in the urban cores suffer from numerous educational, economic, and political deficiencies that are aggravated by these numerous deficiencies working together to reinforce one another.

The concentrating of low income and minority populations in the urban cores and inner suburbs is not simply a problem that the center cities of Minneapolis and Saint Paul must address. Segregated housing and education is an issue even of concern to the surrounding suburban communities, and the failure to act to address this problem can have profound legal, social and economic consequences for both the state and suburban communities.

Legally, as the 1996 Connecticut case *Sheff v. O'Neill* demonstrates, state and suburban governments and school districts may be responsible for the discrimination that occurs as a result of isolating minority and low income populations in the center cities, even if they did not intentionally seek to discriminate against these groups. Hence, the failure to address educational inequities may implicate legal obligations that suburban school districts must meet. Socially and economically, ignoring the segregation of low income and minority populations in the urban cores is bad for all of us. It diminishes the capacity of these individuals to perform as productive adults, it perpetuates racism, and it damages the vitality of the cities which remain important to the economic health of the surrounding suburbs. In short, suburbs need healthy cities to survive and by working together to devise strategies to desegregate and deconcentrate low income and minority populations, both the cities and the surrounding suburbs win.

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[1] Gunnar Myrdal, *an American Dilemma: The Negro Problem and Modern Democracy*, 205 (New York: Harper & Row (1962).

[2] Mydal at 75.

[3] Michael Harrington, *the Other America: Poverty in the United States* (Baltimore: Penguin Books, 1962).

The solution to addressing the problems that racial and economic isolation produce is to integrate urban populations into the broader housing market and area schools. The Twin Cities, along with other regions around the country, have developed numerous housing and educational policies to secure this goal, yielding mixed results. In producing this draft report, the Institute on Race and Poverty hopes to describe the problems of economic and racial isolation, how the two often reinforce one another, and what housing and education policy options have been developed to address this isolation.

Contents

I. Introduction *1*

A. The Institute on Race and Poverty

B. The McKnight Project

C. The National Research Review: Preliminary Findings

II. The Interrelationship between Racial and Economic Segregation *4*

A. Racial and Economic Isolation in Metropolitan Regions

B. Connecting Housing and Educational Policy

III. The Problem of School Segregation *9*

A. Why Segregation Lowers Achievement

B. Why Doesn't School Desegregation Reduce the Achievement Gap Even More Than It Does?

C. The Values of Desegregation

1. *Occupational Aspirations and Expectations*
2. *College Attendance and Educational Attainment*
3. *Social Mobility and Social Networks*
4. *Interracial Relations*

D. Long-Term Effects: Summary

IV. National Housing and Education Strategies *19*

A. Education

1. *Intersection of Race and Poverty*
2. *Desegregation Strategies*
3. *Desegregation Plans and Case Studies*

B. Housing

1. *Fair Housing Legislation*
2. *Fair Share Housing Policy*
3. *Housing Assistance Programs*
4. *Elimination of Exclusionary Regulations and Inclusionary Policies*
5. *Redlining and the Community Reinvestment Act*

V. Local Strategies *52*

A. Housing

1. *Regional Disparities*
2. *Race Relations*
3. *Racial Discrimination and Mortgage Lending*
   a. **Homeownership Programs for Low to Moderate Income Buyers**
4. *Exclusionary Zoning*
   a. **Metropolitan Council Recommendations and Resistance to Change**
   b. **Metropolitan Livable Communities Act**
   c. **Hollman vs. Cisneros: The Barriers to Effective Implementation**
   d. **Barriers to Implementation**

B. Education

1. *Minnesota Policies on School Choice and Desegregation*
2. *General Financing and Demographic Trends in Minnesota*

V. Conclusion *63*

Appendix: Census Data Maps of the Twin Cities and Metropolitan Region

I. Introduction

This report represents the first phase of the Institute on Race and Poverty's research examining segregation in housing and education in the Twin Cities. It contains a preliminary literature review of national and local reports on the current status of housing and education segregation in the United States and the Twin Cities.

A. The Institute on Race and Poverty

The Institute on Race and Poverty is a national strategic research center based at the University of Minnesota Law School. Established in 1993 to create scholarship and dialogue on race and poverty, the institute seeks to promote a better understanding of the issues confronting communities that are both racially segreagated and poor: communities at the *intersection of race and poverty*. The Institute conducts social science, public policy, and legal research; consults with governmental entities, policy-makers, and litigators; holds conferences that are both national and regional in scope; complies and publishes reports on issues of race and poverty; and disseminates research findings to policy-makers, governmental officials, academics, and the general public.

B. The McKnight Project

In June, 1995, the Institute received a grant from The McKnight Foundation for a research project analyzing housing and education policy options in the Twin Cities. This report represents the end of the first phase of that project. When the preliminary report has been through a public comment period and finalized, it will be used as a basis for original research on racial attitudes and preferences; for simulation and policy projections of housing and education policy options; to create maps to illustrate the effects of those policies; and to conduct legal analyses of the proposed policy options. The final report will be released in early 1997 and will be accompanied by a series of follow-up meetings with researchers, policy-makers, and community groups.

After the national research review, the second phase of the project will be to analyze the various policy options available to improve housing and education conditions in the Twin Cities. The completed study will produce a series of maps and reports on different housing and education options that will give the public and policy makers the tools and knowledge necessary to approach the issues of persistent segregation in housing and education effectively.

These analytic tools are needed to help clarify the relationship between housing and schools. Policy makers have generally neither linked these policies to, nor designed them around, this reality. Policy makers have become isolated within their areas of expertise, keeping them from being sufficiently aware of the relationship between housing and education. The failure to connect the two policy objectives has resulted in a poverty of workable long-term solutions for either area.[4] By more fully understanding the connection between housing and education, and the implications for other policy concerns and society at large, policy makers can tackle some of the most troubling challenges facing the nation, not the least of which is an increasing polarization along racial and economic lines.[5]

Practical experience teaches us that there is a high correlation between where we live and the kind of education we have. When schools are segregated, creating integrated neighborhoods is nearly impossible. Neighborhood segregation, in turn, undermines efforts to desegregate schools. Successful integration, of housing or schooling, cannot be sustained without addressing the issues that arise from the connection between the two. Given society's efforts to desegregate schools,[6] and its view that integration is a desirable goal, not coordinating such efforts with housing policy, the other half of the equation, so to speak, condemns school desegregation to failure and accepts segregation in housing as natural.[7]

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[4] john a. powell, *Living and Learning: Linking Housing and Education*, 80 Minn. L. Rev. 749, 756 (1996).

[5] *Id.* at 756.

[6] *Id.* at 759.

[7] *Id.* at 761.

Understanding the link between housing and education will create a more complete and accurate picture of the way segregation operates in society. It will help explain causation and how the state contributes to segregation through numerous policy decisions. Finally, the existence of the link suggests that if we are to address the injury of segregation adequately, we must focus on broader, more complete remedies.*

C. THE NATIONAL RESEARCH REVIEW: PRELIMINARY FINDINGS

The way communities structure education and the way they deliver housing interact in a manner that is critical to the life chances of people who are caught at the intersection of race and poverty. To obtain evidentiary grounding for this hypothesis, a broad research review was undertaken. The areas examined were nationwide racial and economic segregation and school segregation, the national strategies now underway to remedy the negative effects of educational and residential segregation, and the local strategies being constructed and implemented in the Twin Cities to combat segregation in housing and education.

Racial and economic segregation persists in large metropolitan areas. White flight, the shrinking of the tax bases of large cities, including inner-ring suburbs, and continued racial discrimination in metropolitan housing markets march on in the United States unabated. This segregation damages the economic health of cities as well as the entire metropolitan region in which the center city is located.

Many projects have been implemented to integrate both schools and neighborhoods, but the actual trend in housing and education has been towards segregation in the last fifteen years, not away from it. The move by school districts to have court-mandated desegregation orders lifted, a growing hostility towards affirmative action, and a general reluctance by suburbs to participate in metro-wide strategies to address educational and residential racial segregation have left few bright spots on the national scene. Yet there have been successful school desegregation efforts, and even a few instances where towns were able to end exclusionary zoning laws and still maintain stable neighborhoods through cooperation between their municipality and a nearby large city.

Moreover, while many school districts and municipalities no longer intentionally discriminate against low income or minority populations, the absence of such intentional discrimination may not relieve them of their legal responsibility for the de facto discrimination that occurs as a result of policies they construct. In the 1996 case, *Sheff v. O'Neill*, the Connecticut Supreme Court ruled that even de facto discrimination that results from specific policies may violate the state constitution. As a result, the State of Connecticut and the suburbs surrounding Hartford shared legal responsibility for the segregation of low income and minority populations in the city of Hartford.

While it is too soon to predict the implications of *Sheff*, it is clear that many are law suits may result in other states also challenging specific policies and actions resulting in de facto discrimination. Moreover, given the similarities between the Minnesota and Connecticut constitutions, *Sheff* may send an important signal to Minnesota and the Twin Cities suburbs regarding their responsibility for de facto discrimination and the concentration of low income and minority populations.

Looking to the Twin Cities, efforts to address educational segregation have taken form in several innovative efforts, among them, school choice programs, magnet schools, charter schools, and attempts to put school voucher programs in place. Like the in-place strategies discussed above, the verdict is not yet in on charter schools, school choice, or school voucher programs. Strong critics of these programs, especially of school choice programs, warn that reliance on free-market conditions to escalate competition between schools may just increase the gaps in quality between those schools, as well as subverting desegregation plans that don't fit with the "choice" theory.

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* *Id.* at 767.

The Twin Cities, like so many other growing cities, exhibits the classic sprawl of suburbs away from the city. This leaves its inner-city core burdened by poverty, with strikingly different population characteristics from the suburbs, including shrinking per capita income, limited economic opportunity, and crime. The Twin Cities area is among the most highly segregated metropolitan areas in the United States, with giant gaps between the worlds' of whites and minority groups. This gap is exemplified by the well documented racial discrimination that minorities experience in applying for mortgages. However, home ownership programs for low to moderate income buyers have been created, both privately and with local government sponsorship. Meanwhile, the Twin Cities' various municipalities continue to include elements of exclusionary zoning in their regulations and administrative procedures.

There have been several metro-wide efforts to create affordable housing throughout the area, initiated by the Metropolitan Council, with recommendations for local governments to try to relax zoning barriers to the construction of affordable housing. In 1995, the Metropolitan Livable Communities Act (MCLA) became law. The MCLA provides financial incentives to communities choosing to participate in projects to build affordable housing. The Act, while a hopeful sign, does not make participation mandatory or have penalties for non-compliance as earlier forms of MCLA in the Minnesota legislature had.

Another important development on the housing scene in the Twin Cites is *Hollman v. Cisneros*, a lawsuit brought by minority residents of public housing in Minneapolis, and settled by HUD. The consent decree from the settlement mandates new public housing units that cannot be located in areas of high concentrations of poverty or in areas of high concentration of minorities. Beyond the consent decree and its various components, the MCLA, and other hopeful projects to reduce housing segregation in the Twin Cities, lie the continual problems of exclusionary zoning, "Not In My Back Yard" sentiments of more affluent residents, and the simple fact of the lack of affordable housing units in both the Cities and the surrounding suburbs.

Segregation in housing and education in the Twin Cities seems to match current trends on the national scene. Innovative programs to address problems both in education and housing are underway, but barriers to true integration, and a city where living and going to school is a positive experience for all of a metropolitan area's residents, are high and growing. If it looks like a precarious balancing act is being managed both by educational and housing policy makers, it is. Looking at both issues together may show a way to make growing up as a poor person of color an incidental factor to that person's choice of residence and educational opportunities.

Overall, the conclusion of this preliminary report is that despite the implementation of several education and residential desegregation efforts, the Twin Cities metropolitan region remains highly segregated. Future research in phase two of this study will document this segregation in more detail, offer a more in-depth policy study of programs to address this problem, and offer recommendations for future policy development.

II. The Interrelationship between Racial and Economic Segregation

A. RACIAL AND ECONOMIC ISOLATION IN METROPOLITAN REGIONS

Economic and racial segregation has grown and intensified over the last twenty years, resulting in the increasing geographic isolation of poor and minority households.[9] Using Census data and what demographers call a segregation or dissimilarity index, between 1970 and 1990, poor households became 13% more segregated in the 40 largest metropolitan areas.[10] Similarly, studies of racial segregation demonstrate that America's major urban centers remain highly segregated, with the cities located in the northern "rustbelt" generally being the most segregated in the country.[11] These figures indicate that segregation as a national issue has not abated and it continues to have negative effects on society at large, and for poor individuals of color in particular.

Between 1970 and 1990, poor households became 13% more segregated in the 40 largest metropolitan areas.

— HOUSING POLICY DEBATE 6(1), 95

Racial and economic segregation damages a metropolitan region, including both the urban cores and the suburbs. Segregation prevents wealth accumulation by residents of isolated, poor communities of color, thereby establishing barriers to market participation. Lack of educational opportunities, poor job accessibility, and the lack of appreciation in housing values in isolated, low-income communities are symptoms of the problem.[12] Segregation geographically polarizes metropolitan areas along lines of race, income and opportunity, thereby artificially separating urban centers from the surrounding suburban communities.[13]

Cities are important to their regional economies.[14] Suburbanites as well as their suburban governments benefit from their cultural identity and economic position in relation to the urban cores. Suburban communities benefit from the unique economic opportunities and cultural amenities that large urban centers provide.[15]

Metropolitan areas with an employable workforce possessing basic job skills have an advantage in attracting businesses to the area. Metropolitan regions as a whole benefit from breaking down barriers such as segregation which prevent poor communities of color from full participation in the metropolitan economy as workers, consumers, and citizens. A community has a healthy economic base when people both inside and outside the community are willing to invest in the area — through purchasing homes, sponsoring or owning businesses, and making loans. Recent studies have documented the lack of an economic base in poor communities of color.[16] This lack of capital and access to capital is a serious issue for any community in a market society. For example, studies of fiscal characteristics of black and white suburbs have found that black suburbs have lower property tax base, higher taxes, and greater indebtedness.[17]

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[9] Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass*, (Cambridge, Mass: Harvard University Press, 1993).

[10] Alan J. Abramson, et al, "The Changing Geography of Metropolitan Opportunity: The Segregation of the Poor in U.S. Metropolitan Areas, 1970 to 1990," *Housing Policy Debate* 6(1), –1995.

[11] See also: Reynolds Farley and William H. Frey, *"Changes in the Segregation of Whites from Blacks During the 1980s: Small Steps Towards a More Integrated Society,"* 59 AMERICAN SOCIOLOGICAL REVIEW, 23 (February, 1994); Roderick J. Harrison and Daniel Weinberg, "Racial and Ethnic Segregation in 1990" (Washington, D.C.: U.S. Bureau of the Census, April 1992).

[12] Ihlanfeldt, Keith. 1994. The Spatial Mismatch Between Jobs and Residential Locations Within Urban Areas. *Cityscape: a Journal of Policy Development and Research* (HUD), Vol. 1, No. 1 (August 1994).

[13] William H. Frey and Elaine L. Fielding, "Changing Urban Populations: Regional Restructuring, Racial Polarization, and Poverty Concentration," *Cityscape: a Journal of Policy Development and Research (HUD)*, 1 (No. 2, June 1995).

[14] Anthony Downs, *New Visions for Metropolitan America* (The Brookings Institution, 1994); Dennis Keating, The Suburban Racial Dilemma: *Housing and Neighborhoods* (Philadelphia: Temple Univ. Press, 1994).

[15] Jane Jacobs, *Cities and the Wealth of Nations:* Principles of Economic Life (New York: Random House, 1984); David Rusk, *Cities Without Suburbs* (Washington, D.C.: Woodrow Wilson Center Press, 1993); Hank V. Savitich, "Ties That Bind: Center Cities, Suburbs, and the New Metropolitan Region," (unpublished); Richard Voith, "City and Suburban Growth: Substitutes or Complements?", 31 Business Review (September October 1992).

[16] Melvin L. Oliver and Thomas M. Shapiro, *Black wealth/White wealth; a new perspective on racial inequality*, (New York: Routledge, 1995).

[17] Mark Schneider and John Logan, "Suburban Racial Segregation and Black Access to Local Public Resources," Social Science Quarterly, 63(4, 1982): 762- 770.

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Communities and programs have addressed the problem of a lack of economic resources in different ways. Strategies include banning racial discrimination in the real estate, mortgage, and lending markets. These markets fostered racial discrimination in the past and require monitoring into the present. Past racial discrimination plays a large role in creating the current poor economic condition of these communities, especially in the housing market where rates of home ownership for non-whites are less than for whites of similar socio-economic status. Current efforts to improve economic conditions often start with changing the public perception of the area so that people inside and outside the community will want to invest in it.

Yet questions persist regarding whether segregation can be addressed successfully by cities alone. For some, integration can only be solved on a regional scale since its causes - suburbanization, "white flight," and racial discrimination in the metropolitan housing market - also occur on a regional scale.[18] Racial stability, the maintenance of integrated schools and housing, is a dynamic balance, suggesting that integration is not a one-time achievement. An integrated community, one that reflects the racial and economic diversity of the surrounding metro area, is something which must be actively maintained by mechanisms which reinforce racial stability.[19] Examples of such mechanisms are on-going pro-integrative partnerships between urban and suburban municipal government and —between local government and neighborhoods, the real estate community, and lending institutions, schools and community organizations.[20]

black suburbs have lower property tax base, higher taxes, and greater indebtedness

—SOCIAL SCIENCE QUARTERLY, 63(4, 1982)

B. CONNECTING HOUSING AND EDUCATIONAL POLICY

If economic and racial isolation must be examined as a regional problem and not one simply of center cities, housing and educational policies similarly need to be examined in terms of their relationship to one another.

In *Swann v. Charlotte-Mecklenburg Board of Education*, the United States Supreme Court indicated that there might be a connection between housing and schools when it stated:

> *The location of schools may thus influence the pattern of residential development of a metropolitan area... It may well promote segregated residential patterns which, when combined with "neighborhood zoning," further look the school system into the mold of separate races. Upon a proper showing a district may consider this in fashioning a remedy.*[21]

Despite this dicta, *Swann* did not explicitly rule on the issue of whether discrimination by governmental actors other than school agents would justify a school desegregation remedy. The decision merely permitted the court to consider housing issues when fashioning a desegregation remedy. This is exactly what occurred in *Milliken v. Bradley*.[22] Here, the district court fashioned a desegregation remedy for the city of Detroit with busing across district lines to include suburban school districts in the Detroit area. In justifying its remedy, the district court accepted evidence (in part provided by Karl Taeuber, a demographer), that there were three possible reasons for why housing was segregated in the Detroit area: economics, choice, and discrimination. His conclusion was that discrimination was controlling, that it was the major reason for residential segregation in the Detroit area and that such residential discrimination had an impact upon school segregation in the area. The Supreme Court overturned the district court decision, ruling that cross-district busing was not a proper remedy unless it could be shown that the suburbs had contributed to the segregation in some fashion.

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[18] Institute for Policy Studies, Poverty Deconcentration as a Policy Strategy (Occasional Paper No. 17, Johns Hopkins University, 1995).

[19] Keating, Dilemma. Richard Smith, "Creating Stable Racially Integrated Communities: A Review," *Journal of Urban Affairs*, 15:2 (1993). Donald L. DeMarco and George Galster, "Prointegrative Policy: Theory and Practice", *Journal of Urban Affairs*, 15:2(1993).

[20] Smith, *Urban Affairs*. Rose Helper, "Success and resistance factors in the maintenance of racially mixed neighborhoods" in John Goering (ed.), *Housing desegregation and federal policy*, (Chapel Hill: Univ. of North Carolina Press, 1986).

[21] 402 U.S. 1, 20 21 (1971).

[22] 418 U.S. 717 (1974).

However, it is important to note that while the court rejected the metropolitan plan in *Milliken*, Justice Stewart held out the possibly that a metropolitan plan might be acceptable.

> *This is not to say, however, that an interdistrict remedy of the sort approved by the Court of Appeals would not be proper, or even necessary, in other factual situations. Were it to be shown, for example, that state officials had contributed to the separation of the races by ... purposeful, racially discriminatory use of state housing or zoning laws, then a decree call for transfer of pupils across district lines for restructuring of district lines might be appropriate.*[33]

In her pathbreaking work, Diana Pearce specifically explored the implications of the Court's assertion. Peace's examination of the linkages between educational desegregation and housing integration in metropolitan regions remain two of the most important studies on this project.[34] Pearce's 1980 report opens by noting that housing and educational segregation are linked, often thought to be two facets of the same problem of urban segregation. According to Pearce, school segregation reinforces housing segregation by providing support for it by signaling that there are places where whites can escape racial minorities out in suburban schools.

However, Pearce asks, if school segregation reinforces housing segregation, does school desegregation promote housing desegregation? Some argue no, contending that instead it produces white flight. Yet Pearce argues that white flight is only possible where a metro area creates or permits white enclaves for whites to flee.

To understand how school integration influences housing choices, Pearce offers as a hypothesis that schools are important factors in housing choices, with their impact varying on whether the schools are segregated or desegregated at the metro level. The hypothesis is that by removing white enclaves in the schools, educational policy has a profound impact on housing choices and that results in lowered levels of housing segregation. In effect, if there is no place to run, whites will be less likely to flee. Hence, metropolitan schools unhook school racial composition from neighborhood composition

Pearce's 1980 study looked at metropolitan school desegregation plans to see the impact on housing patterns. The study turned to long term effects, at least five years on housing after a school plan was adopted.

The study uses a controlled experiment. Seven paired cities were selected. One city of each pair had a metro school desegregation plan for at least five years; a minimum 10% minority in schools; and a population of at least 100,000 in 1970. The cities selected were chosen to maximize variance in ethnic mix, region, length and type of desegregation. each city was then paired with a similar city, but which did not have a metropolitan desegregation plan. Data was gathered from interviews, school district data, newspapers census data, visits to real estate agents, and academic reports, among other sources.

Pearce found that information about schools is often used to convey information about the racial content of communities, if the schools are not desegregated. Real estate agents or newspaper ads will discuss the schools to reveal information about neighborhoods because it is illegal in many cases to discuss directly the racial content of neighborhoods. Hence, schools are often used as codes for race.

In looking at 50 real estate ads in each area, Pearce found no major difference in the ads in segregated versus desegregated school districts. However, in areas with segregated schools, the name of the school (which is located in a neighborhood) was mentioned two to ten times more often than was the case with ads in desegregated schools. For all the ads surveyed that mentioned a

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[33] 418 U.S. 755.

[34] Diana Pearce, "Breaking Down Barriers: New Evidence on the Impact of Metropolitan School Desegregation on Housing Patterns," final report to the National Institute of Education, Washington, D.C.: Center for National Policy Review, November, 1980; Diana M. Pearce, Robert L. Crain, Reynolds Farley, "Lesson Not Lost: The Effect of School desegregation on the Rate of Residential Desegregation in Large Central Cities," Washington, D.C.: Center for National Policy Review:, 1984.

school, not one ad mentioned a predominately black school and half the schools mentioned were 98%. Thus, Pearce concluded that in segregated communities, the name of the school is a code word for the race of the neighborhood and that the segregated school was considered a desirable characteristic to a neighborhood and the marketing of a house.

Next, Pearce studied advice from real estate agents. She found that agents used school advice as a way to discuss neighborhoods, sometimes referring the race of the school. Overall, agents sometimes use "good' and "bad" to refer to the racial composition of schools, or to use other information about schools to convey racial information about a neighborhood.

Finally, Peace turns to the paired cities and finds that those cities with metro-wide school desegregation plans had experienced decreased residential segregation as measured by the index of dissimilarity. Two of the cities without metro school desegregation never experienced a drop in housing segregation.

Hence, among other conclusions, Pearce contends:

- The effect of metro school desegregation is not concentrated in the first few years, but rather continues unabated, at least into the second decade.
- The amount of impact of metropolitan school desegregation is related to how "metropolitan" the school desegregation actually is, i.e., the more metropolitan it is, the larger the impact.
- A growing housing market probably enhances the effects of metropolitan housing segregation, while metropolises that are not experiencing growth will inhibit the effects of metropolitan desegregation.

However, in areas with segregated schools, the name of the school (which is located in a neighborhood) was mentioned two to ten times more often than was the case with ads in desegregated schools.

— Diane Pearce

Overall, in moving towards a theory of metropolitan desegregation, Pearce found that the impact school desegregation plans can be seen on the individual, neighborhood, and metropolis level.

On the individual level, Pearce finds that schools provide positive racial encounters and reduction of fears between majority and minority parents. While all desegregation plans do this, metro-based plans let neighborhood and metropolitan impacts reinforce the individual impacts.

At the neighborhood level, when white enclaves are removed, it makes it difficult to flee school integration. If we exempt racially integrated neighborhoods from busing, incentives are created to encourage people to move into these neighborhoods.

On the metropolitan level, school desegregation sometimes results in increased outside resources for the school, but more importantly, it puts a major institution behind the principle of equal opportunity.

Overall, the paper concludes with the thesis that the more metropolitan the school plan the stronger the impact on housing segregation; school desegregation has long-term and cumulative effects on housing choices; school segregation, supported by housing segregation, is self-perpetuating; and housing segregation is not going to disappear on its own.

In the 1984 report, Pearce examined at 25 central cities, most of which did not experience metro-wide school desegregation. Here, because the desegregation only occurred in the central city, the impact of the desegregation was confined to this area and did not extend to the suburbs. This study included 25 cities with black populations over 100,000 in 1980, and it employs the index of dissimilarity to examine the spacial segregation of blacks. The study also looks to a lag of four years between school desegregation and housing changes.

The result of her study demonstrated a clear correlation between school desegregation and housing desegregation (R^2=.765), with there being a "curvilinear effect, reflecting a decreasing return in housing desegregation as greater amounts of school desegregation occur."

Pearce did test for spurious effects, finding region of the country was not an important variable. Only population growth seemed to be significant, hence while southern cities seem to be more likely to have integrated neighborhoods as a result of school desegregation, that is really a consequence of the fact that southern cities were growing more quickly. Size of the city in 1970 and the percent of the blacks in schools in 1968 also seemed significant.

Overall, the Pearce studies are suggestive of important relationships between school desegregation policy and housing, suggesting several important questions warranting further exploration.

- Will metro-wide school desegregation plans better foster housing integration than non-metro plans?
- What would happen if a metropolitan housing-desegregation plan were adopted to work with a school metro-desegregation plan?
- Can one generalize from the seven paired cities or the twenty-five metropolitan areas?
- Do different types of school desegregation plans make a difference?
- How do different types of plans foster or influence white flight?
- How does income or wealth impede or foster housing or school desegregation plans?
- Do whites flee for racial reason, for fears of the quality and safety of the schools?
- How much does income influence educational/residential choice and mobility?

Pearce's studies and conclusions are not without its critics. David Armor looks at the relationship between housing and educational segregation.[25] He first states that there are two theses here: housing segregation causes school segregation, and vice versa.

The first thesis asserts that residential segregation acts as a beacon to reinforce school segregation. The second thesis argues much the same.

Armor argues that the beacon effect for the second thesis is fraught with logical problems. First, preference for schools and neighborhoods reflect the same preferences of racially-mixed neighborhoods. Hence, schools do not cause segregation; segregation is a problem of private life style choices. Second, schools are not the only signal of the racial composition of a neighborhood. Other factors, such as crime, can be important in neighborhood selection. Third, we need to look at the impact of schools from the point of people who currently live in a neighborhood versus those moving in. For both groups, one needs to look at the preference for types of racially-mixed neighborhoods they wish to live in and not from the impact of the schools.

Armor reviews studies of the types of neighborhoods whites and blacks prefer to live in, noting whites preferences for neighborhoods far less racially integrated than is the preference for blacks. Specifically, he notes that Blacks express "disinterest in majority white neighborhoods," whereas whites seem to prefer neighborhoods that are mostly white, although still mixed to a degree. Hence, these preferences, the willingness to abandon neighborhoods that do not meet those preferences, is seen as critical to explaining housing segregation.

Armor indicates how in housing models constructed for Atlanta and Kansas City, such choice models account for the 82% and 76% of the index of dissimilarity. Hence, for Armor, choice is an important factor to explaining residential segregation. Finally, Armor turns to discrimination as a cause for residential segregation. Here, he argues that there is little or no official government discrimination and finds that what private discrimination that occurs is small, account for very little of the index of dissimilarity, and is otherwise hoard to measure or demonstrate. Hence, given that

[25] David Armor, *Forced Justice: School Desegregation and the Law* (New York: Oxford University Press, 1995).

any segregation that occurs is the result of private choices by individual living patterns and not as a result of any intentional governmental discrimination, few government policies directly influence where people live.

Armor notes also that studies by Pearce are the major studies that link housing and school segregation. However, he criticizes the 1980 matched pair study as having too few cases, while the later 25 city study looks at black versus white, ignoring Hispanic and Asian populations. It also computes the dissimilarity index only for center cities and not for the entire metropolitan area, and it ignores the impact that white flight may have had on neighborhoods. Hence, the studies may show desegregation in the cities, while ignoring metropolitan segregation and the white flight from the cities, resulting in less overall contact between whites and blacks. Overall, Armor concludes that these studies fail to prove the connections between housing and school policy. Other critics reached similar conclusions regarding Pearce' work and claim the that there is a connection between school and housing desegregation. [26]

III. The Problem of School Segregation

The 1954 *Brown v. Board of Education* Supreme Court decision struck down as unconstitutional the maintenance of segregated schools. According the Court, segregated schools deny blacks the same education opportunity as whites, perpetuating the badges of racism that burden minorities. Despite *Brown's* mandate to integrate, many school districts remain segregated, and other school systems, once under court order to integrate, are now seeking to be lifted from these orders and are opting to return to community or neighborhood schools. The result of such a move may very well to resegregated schools. Hence, an understanding of the effects of segregated schools is necessary.

There is considerable evidence that differences between blacks and whites in school performance and economic success are the vestiges of past and present school segregation and educational discrimination, and other forms of segregation and discrimination which are to a considerable degree caused by educational segregation and discrimination. [27]

School segregation and discrimination perpetuate educational inequality and social injustice. Limited educational attainment, high crime rates, and large numbers of fatherless children all have provided excuses for whites to believe that segregation is justified and that discrimination is the natural consequence of black incompetence and immorality. However school segregation and educational discrimination have significantly contributed to the disadvantages of African Americans. Segregation has contributed to African Americans to having lower socioeconomic status, less education, and a greater feeling of helplessness and alienation; these social, psychological, and economic hindrances cause delinquency, crime, and single parenthood. Conversely, the elimination of education segregation and discrimination creates a steadily improving situation for African Americans and other minority groups. [28]

School segregation also plays a major role in the development of cities and metropolitan areas. Sociologist and social welfare expert, Diana Pearce, found that segregated schools tend to create segregated housing. Her first study showed that those areas which were able to desegregate schools on a metropolitan-wide basis achieved much more desegregation of housing in the suburbs. When this occurs, real estate agents are no longer able to "steer" whites into white neighborhoods and blacks into black neighborhoods by advertising the name of the local school as a racial code. Another factor is that some racially mixed neighborhoods will be stabilized by guaranteeing that

[26] Christine H. Rossell, "Does School Desegregation Policy Stimulate Residential Integration? A Critique of the Research?" 21 Urban Education, no. 4, January, 1987, 403 420; William A.V Clark, "Does School Desegregation policy Stimulate Residential Integration? Evidence from a case Study." 23 Urban Education no. 1, April, 1988, 51 67; Eleanor P. Wolf, "Northern School Desegregation and Residential Choice," 177 Supreme Court Review 63-85.

[27] Robert L. Crain and D. Sullivan, "Desegregation of Public School Districts: Persistence and Change," unpublished work in progress (1996), p.1.

[28] Crain and Sullivan, p.2.

schools will remain integrated. School desegregation will also have a positive impact on the city's social climate when crime is reduced, income inequality declines, prejudice is lessened, and central-city property values become more stable.

When segregated schools drive whites out of the central city into the suburbs, they cripple central business districts and cause downtown offices to have more difficulty recruiting white employees who have longer commutes. There is anecdotal evidence to suggest that white leaders in a number of cities pressed hard to create metropolitan-wide desegregation plans. Such plans failed in the courts in Detroit and Kansas City and had only limited success in St. Louis. However, Wilmington, Delaware and Louisville, Kentucky are two locations where a metropolitan-wide plan was endorsed by the city and won in the courts. In Louisville, the Fair Housing Council concluded that school desegregation led to a 50 year low in housing segregation.[29] After 30 years of steady increases in segregation, housing became less segregated after the school desegregation plan was implemented in 1975.

A. WHY SEGREGATION LOWERS ACHIEVEMENT

Critics of desegregation policies have argued that it is illogical to claim that a black student can only learn if he is sitting next to a white student.[30] Stated in this way, the statement is illogical and probably also wrong. But at the same time there are very few all-black schools in the United States which have high achievement. There are several reasons. In many cases minority schools receive less resources. In NYC, for example, the predominantly minority city school system receives far less financial support than do the mostly white surrounding suburbs.[31] Expenditures per pupil are in many cases twice as great in the suburbs. Inner-city segregated schools also have more difficulty recruiting and holding staff, if for no other reason than that the commutes are longer from the middle class areas where teachers typically live.

Perhaps the most important reason for lower achievement in segregated schools is the widespread alienation experienced by both students and teachers which creates a climate of low achievement. Some of the most interesting writing on this subject is by John Ogbu, an anthropologist whose upbringing in Nigeria gives him a fresh perspective on African-Americans. He writes "the quality noticeably absent from black students is seriousness and perseverance in their school work."[32] He believes that the lack of motivation to perform in the classroom is linked to the "job ceiling' - the fact that black students are frequently prevented from holding high salaried positions.

Minority students "know and believe they do not have chances for employment, advances...good wages and other benefits of education equal to those of Anglos. They also know that the primary reason for this is discrimination." Ogbu goes on to state that black students are adapting to an American caste system of segregation and discrimination in which, realizing they cannot achieve high status among whites, they work to achieve high status among blacks. This is often accomplished by renouncing those behaviors which imply that they are striving to compete with whites, such as academic achievement. Ogbu's colleague, Signathia Fordham writes that "black adolescents are keenly aware of the stigma associated with being successful in school since school is seen as an agent of the dominant society."[33] The result is to label striving in school as "acting white" and this leads to low achievement. One of the most striking pieces of evidence on this is the fact that black students in college typically make grades lower than would be expected based on their SAT scores.[34] Rather than low achievement scores pulling grades down, poor grades are the locomotive pulling down achievement test scores.

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[29] Fair Housing Council, "School Desegregation Leads to Fifty Year Low in Housing Segregation," Louisville: Fair Housing council, May, 1992).

[30] David Armor, *Forced Justice: School Desegregation and the Law* (New York: Oxford university Press, 1995).

[31] Jonothan Kozol, Amzing Grace: The Lives of Children and the Conscience of a Nation (New York: Crown Publishers, 1996).

[32] J.U. Ogbu, "Minority Education and Caste," in N. Yetman (ed.) *Majority and Minority* (1985) p. 379).

[33] Signathia Fordham, "Racelessness as a Factor in Black Student's School Success: Pragmatic Strategy or Pyrrhic Victory, 58 *Harvard Educational Review*, 54, 55 (1988).

Fordham states the dilemma well:

> Succeeding in school is invariably associated with movement away from the community and is seen as a sign of having been coopted by the dominant society...black adolescents consciously or unconsciously sense that they have to give up aspects of their identities and of their indigenous cultural system in order to achieve success as defined in dominant group terms...for many of them the cost of school success is too high; it implies that cultural integrity must be sacrificed in order to 'make it.'[34]

Ogbu points out that this line of thinking explains why black immigrants from Africa and the Caribbean typically perform better in school and work than do native born African-Americans. He notes a number of examples from around the world where those groups which are "involuntary" minorities, either because other groups have occupied their lands and/or enslaved them, tend to achieve less than do immigrants who voluntarily move to these countries.

all of the IQ gap between whites and blacks can be explained by differences in neighborhood poverty and parenting practices.

When pulling all of this evidence together, we see why school desegregation could be expected to pull down black student motivation and thereby pull down their test performance. It leads us to conclude that it will be extraordinarily difficult to raise African-American achievement in segregated schools, or to prepare them for success in employment and college. Segregation is not a minor or incidental strand in the web of disadvantage in which blacks are caught; it is the spider at the center of the web.

B. WHY DOESN'T SCHOOL DESEGREGATION REDUCE THE ACHIEVEMENT GAP EVEN MORE THAN IT DOES?

Since segregation appears to play a central role in educational disadvantage, one might expect the desegregation of schools to lead to an immediate erasure of the white-black achievement gap. Instead even after a decade or more of desegregation only about one third of the gap between black and white students has been erased. This amount of improvement should not be dismissed as negligible; indeed sociologist Christopher Jencks of Northwestern University points out that educational performance is the one area where there has been the greatest improvement among impoverished minorities. There has not been a corresponding improvement in employment opportunities or income.

Nonetheless, the question as to why the improvements are not larger is important. In reviewing this literature, we conclude that the problem is that the effects of segregation linger for multiple generations. African-American students attending desegregated schools are still living with parents whose own schools were segregated, in neighborhoods where most of the adults they see also come from segregated schools. Recent research by Brooks-Gunn and her colleagues and by Jonathan Crane suggest that all of the IQ gap between whites and blacks can be explained by differences in neighborhood poverty and parenting practices. But the parenting practices are themselves a reflection of family instability, poverty, unemployment and the alienation of mothers and fathers who have been victims of school segregation and employment discrimination.

It is very encouraging that Brooks-Gunn and Crane have shown that when very young black and white children are matched in terms of neighborhood poverty, family disadvantage, educational resources in the home and parenting practices, there is no difference in intelligence test scores. This strongly suggests that if discrimination and segregation are eliminated we can expect a steady closing of the white-black achievement gap. There has been a considerable closure since 1960 when school desegregation and educational reform in inner city schools first began seriously. Nationwide there was a considerable reduction in the white-black gap in both reading and mathematics.[36] We have seen that those states which have desegregated their schools, particularly through metropolitan-wide school desegregation, have seen a further reduction in the racial gap and

[34] Person (1996).

[35] Fordham, at 54.

[36] Jones ( ).

achievement. There is nothing in this research that should make one pessimistic about the future if the United States remains committed to a policy of desegregation and nondiscrimination.

C. THE VALUES OF DESEGREGATION

In the last thirty years desegregation has played a critical role in black progress. Research in this area indicates that providing black children with access to white educational institutions from which their parents had been excluded generally lead to positive short-term outcomes such as improved standardized test scores and greater educational attainment. Yet, understanding the outcome of the 1954 *Brown v. Board of Education* decision by the Warren Court entails analyzing more than effects of desegregation on how well children learn to read and write. The ability to read and write is important, but how children are socialized to become the next generation of adults is even more crucial. The bulk of research on school desegregation has focused on the short-term effects of desegregation on the achievement, self-esteem, and intergroup relations of students in racially mixed versus racially homogenous schools.

Although noteworthy, research on short-term effects does not fully illustrate the effectiveness and positive attributes of educational desegregation. In order to assess the impact of school desegregation policy on the status attainment of African American adults, researchers and policy makers need to look beyond the short term effects, especially standardized test scores, and focus more on long term social and economic outcomes. Educational achievement alone does not solve the problem of economic inequality. School desegregation must do more than raise black students' test scores; it must also break the cycle of racial segregation that leaves blacks and whites worlds apart."[37]

The research on the long term effects of desegregation provides some of the most up-to-date evidence of the positive effects of school desegregation. This research indicates that school desegregation has a positive effect on four main categories: (1) the occupational aspirations of high school students (2) educational attainment and college attendance (3) social networks and social mobility and (4) interracial relations.

1. *Occupational Aspirations and Expectations*

In his study of occupational development, Gottfredson noted that black and white students hold similar occupational expectations and values when they are in elementary school, but that these interests begin to diverge toward traditional race and sex stereotypes by the end of high school.[38] Throughout the decades researchers have attempted to assess the effect of school desegregation on the occupational expectations of African Americans. By way of research on the occupational aspirations of 3,119 black high school seniors from 1,200 randomly selected high schools in the National Longitudinal Survey of the 1972 senior classes, Dawkins discovered that school desegregation experiences play an important part in expectations.[39] He noted that individuals with no desegregation experiences in elementary and secondary schools were less likely to anticipate professional careers.

However, both male and female black students who attended desegregated schools were more likely to expect that they will enter a professional occupation such as accounting, medicine, law, or engineering - occupations that blacks are traditionally much less likely to enter than whites. Hence, Dawkins argued that segregated schools may be part of a developmental process that channels or perpetuates black students' expectations toward a "narrow range of traditional occupations that are low in prestige and compensation." Additionally, he noted that in general, other socialization factors such as 'social class, academic aptitude, educational aspirations, high school curriculum, and self-concept of ability to complete college also have a strong effect on the complex development of aspirations, but school desegregation has a positive effect on the occupational aspirations of blacks

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[37] R.L. Crain and A.S. Wells, "Perpetuation Theory and the Long Term Effects of School Desegregation," 64 *Review of Educational Research* 531, 533 (1995).

[38] Gottfredson (1978).

[39] M. Dawkins, "Black Student's Occupational Expectations: A National Study of the Impact of School Desegregation," 18 Urban Education, 98 (1983).

independent of all these other factors.[40]

In an another study, Hoelter researched the differences in the strategies for attaining occupational goals used by segregated and desegregated black high school students.[41] According to Hoelter, when researchers examine aspirations they also need to understand whether respondents have developed a realistic plan of action and a clear understanding of the means one employs to obtain an occupational goal.[42] Thus, he set out to examine the correlation between educational plans and occupational aspirations. Hoelter based his research on questionnaire data from 382 male high school seniors in Louisville, Kentucky. In this study, 174 were black students attending segregated schools with white populations of less than 5 percent. The other 208 students, half whom were black, attended desegregated schools with white populations of at least 60 percent. Hoelter did not find any difference between the educational aspirations of desegregated and segregated black students, but he did discovered a higher correlation between educational and occupational aspirations among desegregated blacks. According to Hoelter, desegregated blacks had more realistic career goals which were consistent with the amount of their education attainment.

Falk also found that the black students who attended formerly all-white schools did not, as he had hypothesized, have lower educational and occupational expectations and aspirations.[43] In fact, he exclaimed that desegregated students had almost significantly higher occupational aspirations than segregated students. Hence, Falk also argued that the aspirations of the desegregated students seem more realistic because their educational aspirations as high school seniors were highly correlated with their actual educational attainment four years later.

black students who attended formerly all-white schools did not, as he had hypothesized, have lower educational and occupational expectations and aspirations.

– FALK (1978).

These studies among others document that black students who attend desegregated schools are generally more likely to aspired to and pursue high-level professional careers than blacks in segregated elementary and secondary schools. Researchers suggest that blacks from desegregated institutions are more successful because "they are more aware of the occupational opportunities that are available to them, more confidence in their ability to succeed in interracial situations and have more access to informal sources of information about employment opportunities, all of which are important for adult occupational success."[44]

Citing the perpetuation of status inequality among blacks in segregated institutions, Hoelter proclaimed that the knowledge students need concerning the association between educational and occupational attainment is usually transmitted through the interaction of students, school personnel and people outside the school system, including parents. He noted that diffusion of information on educational and occupational opportunities is more prevalent within environments linked to the dominant white community (i.e., the predominantly white school). Hoelter argued that black-white status inequality is perpetuated when blacks remain segregated from the knowledge necessary for rational plans of action pertaining to career goals. He promotes factors which help students in educational and occupational planning; parental involvement and career counseling are enhanced when black students are tied into informational networks. Consequently, Hoelter argues that school desegregation will help break the cycle of segregation by alleviating one of the mechanisms that perpetuated racial isolation: blacks' lack information concerning educational and occupational opportunities and methods of attaining specific goals.[45]

Dawkins and Braddock as well as many other researchers also note that "African Americans career attaintment is (a) directly influenced by educational and social psychological factors and (b) indirectly affected by family background and other social-origin factors.[46] The role of segregated

[40] Dawkins, at p. 110.

[41] J.W. Hoelter, "Segregation and Rationality in Black Status Aspiration process, 55 Sociology of Education 31 (1982).

[42] Hoelter, at p. 32.

[43] Falk (1978).

[44] Crain and Sullivan, at p.18.

and desegregated school experiences is particularly important because elementary and secondary desegregated school experiences affect not only social, psychological, and academic achievement outcomes but also such crucial factors as college attendance and access to broader social networks that provide the job information, social contacts, and sponsorship necessary for career advancement."[47]

2. *College Attendance and Educational Attainment*

Research on the long-term effects of desegregation additionally show that blacks in desegregated schools not only have high occupational aspirations but are also more likely to achieve their career goals due to attain of higher education. The research has also indicated that desegregated blacks tend to enrolled in desegregated (predominantly white) schools. Braddock as well as other researchers found that attendance in a desegregated high school appears to have a direct effect on black student's choice of a predominantly white college.[48] Crain and Wells note that the literature does not provide an answer about the pros and cons for black students of attending predominantly white versus black colleges. The data only show a correlation between black presence in desegregated high schools and their enrollment in predominantly white colleges.[49]

Blacks who attended high schools that were at least 75 percent white attended predominantly white colleges at more than twice the rate (70% versus 33%) of blacks who went to high schools that segregated.

– CRAIN AND WELLS, AT P. 541.

Braddock analyzed survey data from 253 randomly selected African Americans enrolled in two predominantly black and two predominantly white colleges in Florida. Braddock found that high-school racial composition had one of the largest effects on attendance at a predominantly white college.[50] Only high school grades and college cost showed greater effects. The effect of high school racial composition on attendance at a predominantly white college was meditated only slightly by grade point average. Blacks who attended high schools that were at least 75 percent white attended predominantly white colleges at more than twice the rate (70% versus 33%) of blacks who went to high schools that segregated.[51]

In another study Braddock examined the higher educational experiences of desegregated black students using a large federally-financed survey which follows the High School and Beyond survey, a national sample of sophomores and seniors, including 3,119 blacks.[52] Braddock discovered that in both the North and the South the racial composition of a black students's high school exhibits a much larger effect on the racial makeup of the college he/she will likely attend than any of the other factors measured: sex, socioeconomic status, high school test scores and grades. These findings also show that the black graduates of desegregated high schools who go on to institutions of higher education are slightly less likely to attend four-year colleges than their counterparts from predominantly black high schools (58% versus 61%). Braddock attributed the "unexpected pattern" of higher two-year college attendance among black graduates of predominantly white schools largely to the strong tendency for such students to choose white institutions over black ones, 'even to the extent of enrolling at a two-year white college instead of a four -year black college.(p.10) He inferred that blacks' presence in predominantly white institutions profoundly influenced their decision to attend predominantly white colleges over historically blacks schools.

Crain also studied the effects of school desegregation on college attendance. Employing a survey of 1,600 black adults living in Northern metropolitan areas, Crain found that those who had attended integrated schools (at least half-white and not undergoing rapid racial transition) were more likely to have graduated from high school and attended college; they also scored higher on verbal tests

[46] M. Dawkins and J.H. Braddock, "The Continuing Significance of Desegregation: School Racial Composition and African American Inclusion in American Society," 63 Journal of Negro Education, 394 (1994).

[47] Dawkins and Braddock, at p. 396. 45(Crain and Wells, at p.538.

[48] J.H. Braddock, "The Perpetuation of Segregation across Levels of Education: A Behavioral Assessment of the Contact Hypothesis, 53 Sociology of Education, 178 (1980).

[49] Crain and Wells, at p. 531.

[50] Braddock, at p. 178.

[51] Crain and Wells, at p. 541.

[52] J.H. Braddock, "Segregated High School Experiences and Black Students' College and Major Field Choices," paper presented at the National Conference on School desegregation, Chicago, Illinois (1987).

than those in segregated schools.[53] Nearly half, 48 percent, of the respondents from segregated schools did not finish high school, while only 36 percent of the respondents from integrated schools did not graduate. Similarly, only 24 percent of the Northern-born men from segregated schools went on college, while 32 percent of Northern-born men from integrated schools pursue higher education. Crain also found that only a small amount of difference in college attendance between segregated and desegregated blacks was due to difference in family background 42 percent of Northern-born respondents who had attended integrated schools had mothers who had completed high school, compared to 38 percent of alumni of segregated schools. Thus the higher college attendance rate of students from integrated schools is not solely attributed to the fact that they are more often from middle class families.

Crain and Mahard also used a national survey of 2,150 black high school seniors from the National Longitudinal Study of 1972 to estimate black students' college attendance and survival rates (percentage of students matriculated to junior year). They found that black graduates of all-black schools in the South had college attendance rates 5 percent higher and college survival rates that were 6 percent more than their counterparts in desegregated schools.[54] However, in the North, the opposite was true: College attendance rates were 8 percent higher for black graduates of desegregated schools and college survival rates were 10 percent higher for blacks from predominantly white schools. Thus, Crain and Mahard's research revealed that for Northern blacks school desegregation attributes to a higher rate of college attendance and survival. They attributed the South and North difference to the finding that only a few Southern blacks had been desegregated for more than a few years in 1972 due to weak desegregation implementation and to the fact that the south had many traditional black colleges.

A more recent study by Kaufman and Rosenbaum supported the findings that desegregation has a direct influence on college attendance and educational attainment.[55] Kaufman and Rosenbaum found that African American students from inner-city Chicago who moved to predominantly white suburbs through the Gautreaux public housing desegregation program were more likely to finish high school and go on to college than Gautreaux participants who had been relocated within the city. Reasons cited included suburban teachers and counselors helped prepare their children for post-secondary education and being more 'in touch' with colleges. Parents and students spoke of the advantages of attending a high school where there was a constant flow of information about scholarships and college visits and where classmates' older brothers and sisters had gone to college and could offer help and advice.[56]

While evidence supports the general conclusion that blacks benefit educationally and socially from attending integrated schools, some have argued that blacks might benefit from attending racially segregated schools.[57] Support for this proposition comes from a study that found that in 1972, southern blacks who attended school with whites decreased the chances that they would enter college. However, the cause for this decrease in black college attendance was due to attitudes of white school guidance counselors who discouraged black attendance to college. Critical to blacks entering college was not attendance at an all-black school, but the availability of black guidance councilors to advise and encourage blacks to attend college.

Despite this study, the research on long-term effects of desegregation generally supports the conclusion that blacks from integrated schools are more likely enroll in desegregated colleges than blacks in segregated schools and generally experience academic success. Jomills Braddock and James

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[53] R.L. Crain, "School Integration and the Occupational Achievement of Negroes," 75 Sociology of Education, 1 (1971).

[54] R.L. Crain and R. Mahard, "School Racial Compositions and Black College Attendance and Achievement Test Performance," 51 Sociology of Education, 81 (1978).

[55] Kaufman and Rosenbaum (1992).

[56] Kaufman and Rosenbaum, at p 238.

[57] Christopher Jencks and Susan E. Mayer, "The Social Consequences of Growing Up in a Poor Neighborhood," in Laurance E. Lynn, Jr. And Michael G.H. McGreary, eds., Inner City Poverty in the United States, 111, 132 (Washington, D.C.: National Academy Press, 1990).

McPartland have considered the question of whether black students are better off in black colleges or in predominantly white colleges; they concluded that both types of schools are valuable. Blacks colleges often have fewer black dropouts and send more students on to medical and other professional schools, but many blacks students are also occupationally successful if they graduate from predominantly white colleges.

3. *Social Mobility and Social Networks*
Desegregated blacks not only have high occupational aspirations but are more likely to achieve career success via social networks established during their time in integrated institutions. The research reveals that black students who attend desegregated schools are more likely to gain social contacts (not to mention a credential from an institution of higher social status) that will help them obtain jobs not usually held by blacks, often with higher occupational status and income.

The earliest research on this topic was conducted by Crain (1970) when he examined data from a 1966 survey of 1,231 blacks, aged 21 to 45, who had attended Northern high schools.[58] Using the Census, Crain established a list of "traditional" black occupations (those that employed many blacks), these were mostly lower blue-collar jobs, such as service work and labor, and lower white-collar jobs such as clerical work. Crain's research showed that one-third of the respondents who had attended integrated high schools were in three nontraditional black occupations: crafts, sales, and the professions. Only one fifth of the respondents who had attended segregated schools were employed in these fields.

Crain also found that blacks who had attended integrated high schools had better occupations and higher incomes. Crain estimated that about two-thirds of the difference in income between desegregated and segregated adults was due to desegregated adults having higher educational attainment. The other third was attributed to differences in social networks. These social contacts facilitate the obtainment of employment.

Using a national survey of 4,078 employers, Braddock and McPartland demonstrated the importance of social networks.[59] Their data showed that the employers' most popular methods of recruiting job candidates for lower or entry level positions are (a) unsolicited "walk in" applications (b) informal referrals from current employees (e.g. social networks) and (c) referrals from public employment agencies. Informal referrals and unsolicited walk-in applications are also among the most frequent methods used by employers in creating college-educated candidate pools. Other recruitment methods, such as placing ads in newspapers, are used less frequently, especially in recruiting for higher level jobs.

Braddock and McPartland combine their surveys of employers with data from the National Longitudinal Survey of 1972 and used the racial makeup of black students' high schools to identity their social networks as desegregated or segregated.[60] They found that black high school graduates who used social networks to find jobs earn less, on the average, if their networks were segregated than if they had not used networks at all. They earned more if they used desegregated networks rather than no networks. Thus, Braddock and McPartland argued that minorities who experience 'social network segregation' find limited opportunities as job candidates. Crain's research revealed that blacks who attend segregated schools are more likely to be unemployed or have less prestigious jobs than blacks in integrated schools.

Segregated minority candidates are at a special disadvantage because employers tend to ask about their previous employment experiences or request references from school or employment officials. Braddock and McPartland discovered that white employers are less likely to be familiar with predominantly black schools, clergies, or black firms. Thus, simply attending predominantly white

[58] R.L.Crain, "School Integration and Occupational Achievement of Negroes," 75 American journal of Sociology, 593 (1970).

[59] J.H. Braddock and J.M. McPartland, "How Minorities Continue to be Excluded from Equal Employment Opportunities: Research on Labor Market and Institutional Barriers, 43 Journal of Social Issues, 5 (1987).

[60] Id.

schools provided students with important links to white employers. In another study of employers, Braddock, Crain, McPartland, and Dawkins illustrated that the type of high school (inner-city or suburban) attended by black graduates does play a role in whether or not he or she is hired by a white-owned business.[41] On the basis of more than 1,000 responses from business owners and personnel managers at small and large white-owned companies across the nation, the researchers found that black male graduates of suburban high schools were assigned to prestigious jobs more frequently than black males of inner-city schools. This research indicated that employers' knowledge that a black job candidate graduated from a suburban school with a good reputation rather than an inner-city school is likely to signal to employers that the quality of the education was better in the suburban school, and it may also suggest to employers that the job candidates are likely to be more experienced in functioning in interracial situations.[42]

The studies mentioned above illustrate that social networks facilitate job acquisition. Yet Granovetters' work provides further insight of how desegregation provides blacks with access to information, opportunities, and social mobility. Granovetter discussed the strong impact of 'weak ties;"i.e., less formal interpersonal networks via acquaintances or friends on the diffusion of influence, information, and mobility opportunities.[43] Granovetter argued that weak ties often bridge the separate cliques of white and nonwhite teenagers. Desegregated schools may be the only institutions in which African-American and Latinos students have access to the abundance of college and employment contacts that whites and wealthy students often take for granted. Wilson and other social scientists have noted that the greatest barrier to social and economic mobility for inner-city blacks is the degree to which they remain isolated from the opportunities and networks of the mostly white and middle-class society.[44] Hoelter also noted that because the knowledge necessary for the pursuit of goals is not equally available to everyone; information derived from social organizations becomes increasingly important.[45] School desegregation has a profound impact on blacks ability to acquires knowledge that would enhance their academic and occupational success via social contacts and integrated institutions. Thus, studies on long-term effects of school desegregation have highlighted the role of social networks.

"Studies have indicated that desegregated school experiences have a long-term diminishing effect on negative feelings towards other racial and ethnic groups."

– Crain and Wells, at p.551.

4. *Interracial Relations*

Research on the long-term effects of school desegregation also reveal that desegregation enhances interracial relations. "Studies have indicated that desegregated school experiences have a long-term diminishing effect on negative feelings towards other racial and ethnic groups."[46] Trent's studies highlighted that white, black, and Latino graduates of segregated schools perceive racially mixed work groups as less friendly than racially homogenous ones. Respondents of desegregated schools were less likely to perceive their co-workers as unfriendly or hostile. Trent also found that minority graduates of desegregated high schools are more likely to work in firms with greater numbers of white employees. In addition Green noted that eight years after entering college, black who had attended minority high schools were less likely to be employed in racially-mixed work environments or to have established social relationships with whites.[47] On the other hand, Blacks who had grown up in integrated neighborhood were more likely to work in racially-mixed work environments and have social relationships with whites. Hence these findings suggest that desegregation has a positive effect on the integration of labor market as well as one's perception of other ethnic groups; especially co-workers.

[41] J.H.Braddock, R.L. Crain, J.M. McPartland, and M.P.Dawkins, "Applicant Race and Job Placement Decisions: A National Experiment," 6 International Journal of Sociology and Social Policy, 3 (1986).

[42] Braddock, Crain, McPartland, and Dawkins, at p.13.

[43] Granovetters (1986).

[44] Wilson (1987).

[45] Hoelter, at p. 31.

[46] Crain and Wells, at p.551.

[47] K.C. Green, "The Impact of Neighborhood and Secndary SchoolIntegrational on Educational Achievement and Occupational Attainment of College Bound Blacks," Ph. D. dissertation, University of California, Los Angeles (1982).

When looking at the later life experiences of the respondents, Dawkins found that for people under the age of 40 there is a reasonably strong positive relationship between desegregated school attendance and adult interracial contact. For example, Dawkins' research indicated that blacks in the 18 to 24 age group who had attended a desegregated high school in the South had a greater number of white friends. He also discovered that alumni of desegregated high schools were more likely to live in racially mixed neighborhoods. Hence, there is significant evidence that indicate positive long term benefits of school desegregation for improving interracial contact.

D. LONG-TERM EFFECTS: SUMMARY

Research demonstrates that school desegregation does have a significant impact on the life chances of African Americans. "The analysis of data from the most comprehensive studies of African Americans supports the general hypothesis that school desegregation has positive benefits in terms of its impact on the important outcomes in adulthood. The most powerful effect of school desegregation is fostering the perpetuation of desegregation in other areas later in life."[68] Based on studies of black high school students' educational and occupational goals, social scientists have argued that blacks in desegregated schools not only have high aspirations but are more likely to achieve their goals than blacks in segregated schools. Social networks, access to resourceful information, and associations with prestigious institutions are some of the benefits of attending integrated schools. It has been documented that desegregation alleviate some of the social disadvantages experienced by African Americans and other minorities. School desegregation combats the perpetuation of discrimination and provides an outlet for increased interracial contact. Via school integration, students of all races are able to form social bonds that lead to friendship, integrated work places and neighborhoods, and most importantly enhanced race relations.

[68] Dawkins, 1991, p.12.

IV. National Housing and Education Strategies

Efforts are underway across the nation to remedy the negative effects of educational and residential segregation. These programs address the problems of school segregation through a variety of metropolitan-wide desegregation plans while other communities have employed options such as changes in funding formulae to remedy the inequities in educational funding. Residential segregation is addressed in some areas through housing desegregation programs, while other communities seek to address inner-city poverty by creating economic opportunities in existing neighborhoods and extending help to the residents who live there.

A. EDUCATION

Equal access to adequate education is the driving force behind desegregation in education. The strong link of segregation by race to segregation by poverty underscores this issue. A National School Boards Association 1993 report showed that both African-American and Latino students are much more likely than whites to find themselves in schools with concentrated poverty. In these segregated schools, student performance, measured by attendance rates, grades, and reading levels, was much worse than the performance of students enrolled in low-poverty schools. Minority students in such schools have to combat not only stereotypes and racial bias about their predominantly racially segregated schools. But they must also combat the substantially lesser budgets and materials allotted to those schools, which are likely to be located in neighborhoods of concentrated poverty with a low tax-base and a high level of community needs.

Educational desegregation differs from other civil rights legislation in going beyond merely lifting the oppressive constraints that had segregated the races and expecting the newly enfranchised to learn to take full advantage of their newfound rights and freedoms. Rather, educational desegregation worked to dismantle unfair educational practices that would otherwise continue to exist. Desegregation was founded on the idea that merely banning legally-imposed segregation would not equalize educational systems and that government involvement was required to remedy centuries of disparity.

Desegregation has come to be viewed by some as a policy relic of little lasting use. Yet as demonstrated in part III above, the outcomes of desegregation, especially for black students in the South and border states where desegregation received the strictest federal enforcement, had lasting positive effects in terms of career choices, social contacts, education quality, and self-esteem. But these benefits last only so long as desegregation policies are enforced, coming to an end in the 1980s as the Justice Department sought to rescind desegregation orders. Segregation then began to rise in the South between 1988 and 1991 after decades of being the most integrated region in the U.S.[69]

During the Bush Administration, resegregation of African-American students occurred for the first time since *Brown v. Board of Education*. From 1986 to 1991, the proportion of black students in schools with more than half minority students rose, reaching the level existing before the Supreme Court's first busing decision in 1971. Studies on the effects of segregation have found that black students in desegregated schools tend to do better than black students in segregated schools, especially when they enter desegregated schools at a young age.[70] Analyses of student achievement tracking have shown that upper-track students are disproportionately white with access to college-preparatory curricula, while lower-track students are disproportionately of color with access to vocational or lower academic curricula.[71] The long-term effects of segregation for such students are visible in lower educational attainment as well as socio-economic status: a curtailment of students' "life chances." Desegregation and its consequent exposure to diversity has been shown to result in

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[69] Gary Orfield, *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, (A Report of the Harvard Project on School Desegregation to the National School Boards Association, December 1993), 10.

[70] Robert L. Crain and Debora Sullivan, "The Role of School Segregation and Educational Discrimination in the Multigenerational Transmission of Educational Disadvantage," Columbia University, February 1996 report.

[71] Ibid., 7.

greater racial tolerance amongst both black and white students, with white students in their later school years exhibiting the most pronounced positive effect from racial interaction.[72]

1. *Intersection of Race and Poverty*

A 1991 study found that 13 percent of American schools were classified as high poverty with over 50 percent of their students classified as poor - receiving free and reduced lunch.[73] Another 18 percent had between 25-50 percent students in poverty; but half of American schools had less than 10 percent of the students in poverty. Over two-thirds of the schools with less than one-tenth students in poverty had 10 percent or fewer African-American and Latino students. Conversely, among the high poverty schools, only one-seventh had less than a tenth African-American and Latino students. Three-fifths of all high-poverty schools in the U.S. have majorities of black and Latino students.[74]

In Minnesota, the percentages of blacks in a school typically populated by white students is 2.4 percent; the percentage of white students in a school typically populated by black students is 59.1 percent.[75] Nationwide, Minnesota and Oregon have the highest fractions of their relatively small African-American enrollments in predominantly minority schools, Oregon with 35 percent and Minnesota with 46 percent. Such isolation fundamentally limits a child's "life chances": not only are students affected by the quality of their instruction, the facilities, and the opportunities that well-supported schools offer, but they are substantially influenced by exposure to other students in an integrated setting, establishing a broader knowledge base and patterns of social interaction that profoundly shape their life as adults. Such long-term studies of desegregation have taken a sociological viewpoint, believing desegregation programs are essentially trying to break the cycle of segregation by integrating non-white students into high-status institutions and giving them access to their social networks. These broader studies are also based on the belief that test scores and grades do not adequately account for differences between students' socio-economic status later in life.[76]

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– GARY ORFIELD

Disparities between per-pupil funding strategies also exacerbates differences between the concentrated poorer and wealthier communities. Minnesota dropped below the national average in its per-pupil funding in 1989-90 and has remained below ever since. In 1992-93, funding of $5,554 ranked the state twenty-first, below the national spending figure of $5,594.[77] Property taxes fundamentally perpetuate the disparities in wealth between districts since the amount of funds available for education is derived from the relative tax wealth of a district. Minnesota, with substantial weight given to local control of education as opposed to broader state control, provides a minimum basic amount of per-pupil funds but allows for supplemental revenue to be added from the local district. Alternative funding strategies such as property tax levies would still keep the funds raised primarily within the district and only partially equalized by the state. Another funding strategy is the debt service levy, where locally authorized taxes are used to finance school buildings and are tied to a district's demographic growth rather than their relative tax wealth.[78] Some more balanced mixture of local control and broader state or metro-wide planning would help reduce the funding decline and disparity for students.

[72] Ibid., 13.

[73] Gary Orfield, *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, (A Report of the Harvard Project on School Desegregation to the National School Boards Association, December 1993), 21.

[74] Ibid., 22.

[75] Ibid., 17.

[76] Amy Stuart Wells and Robert Crain, "Perpetuation Theory and the Long Term Effects of School Desegregation," *Review of Educational Research* 64 (Winter 1994): 531-555.

[77] Minnesota Friends of Public Education, "Get on the Bus for Public Education," Community Handbook, 1995, 8.

[78] Michael M. Hanke, "Have Money, Will Educate; Wealth Versus Equality in Minnesota School Finance," *Hamline Law Review*, October 1, 1995.

2. *Desegregation Strategies*

Given the desegregation that occurs in schools across the United States, several options have been developed to encourage integration.

Vouchers

Vouchers are described by their supporters as a way of maximizing the power parents have to select the school to which they will send their child. In general, under voucher plans, parents are given a certain amount of money with which they pay tuition at the school of their choice. In theory, by using market choices and forcing schools to compete against one another for students, schools will not only become less segregated but also improve in quality.

There are several different types of voucher plans. One sort of plan imposes no restrictions upon the schools included in the voucher program or upon the discretion of what school parents opt to send their child to. Such a plan could be intra or interdistrict, and perhaps include private and perhaps religious schools. Open or unrestricted voucher plans are often supported by conservatives, although some liberals support vouchers as a means of desegregating inner city schools.

Table 1
State Choice Plans

	Has No Formal Choice Plan	Tried Voucher Initiative*	Has Form of Choice	
Alabama			•	voluntary, interdistrict, 1997
Alaska	•			
Arizona	•		•	
Arkansas			•	voluntary, intradistrict, 1989
California			•	informal and not legislated
Connecticut	•			
Colorado			•	limited and experimental
Delaware	•			
District of Columbia	•			
Florida			•	informal, local, and intrasectional
Georgia	•			
Hawaii	•			
Idaho			•	voluntary, statewide, and open, 1990
Illinois			•	informal and intra- district
Indiana			•	
Iowa			•	statewide, interdistrict, open, 1989
Kansas	•		•	
Kentucky	•			
Louisiana	•			
Maine	•			
Maryland	•			
Massachusetts			•	voluntary, district-by-district, 1991
Michigan			•	voluntary, interdistrict, open-pilot interdistrict, 1991
Minnesota			•	intrasectional, statewide, intra- and interdistrict open enrollment, 1991
Mississippi	•			
Missouri	•			
Montana	•			
Nebraska			•	mandatory, statewide, open, 1991
Nevada	•			
New Hampshire			•	local and informal
New Jersey			•	limited interdistrict
New Mexico	•			
New York			•	local, informal, intradistrict
North Carolina	•			
North Dakota	•			
Ohio			•	mandatory, intradistrict, voluntary interdistrict, 1991
Oklahoma	•			
Oregon			•	voluntary, limited inter- and intrasectional, 1991
Pennsylvania	•			
Rhode Island	•			
South Carolina	•			
South Dakota	•			
Tennessee			•	informal inter- and intradistrict
Texas			•	interdistrict transfers permitted, limited open intradistrict
Utah			•	voluntary, statewide, intrasectional, open, 1988
Vermont			•	informal voucher system in place since 1894 for rural districts
Virginia	•			
Washington			•	voluntary interdistrict and mandatory restricted interdistrict open enrollment
West Virginia	•			
Wisconsin			•	Pilot voucher plan in Milwaukee
Wyoming				informal interdistrict transfers

* No voucher plan sent to voters has ever been approved

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A second type of voucher plan is the controlled choice option. Here, a student or family selects a school within guidelines prescribed by law. These guidelines usually center around ensuring racial, gender, and socioeconomic balance at all school sites. Controlled choice plans are often part of desegregation plans, as they move towards providing equal access to educational opportunities. Key elements in controlled choice plans include: parent information centers; zoning and school assignments not based on neighborhood or school district zoning; and racial fairness guides to ensure racial balance and fairness.[79]

Despite significant public debate surrounding vouchers, no state has instituted a voucher system, although states have experimented with a variety of choice plans, as noted in Table I.

There is a pilot voucher system in Milwaukee, Wisconsin. Milwaukee's voucher program, which is the only one like it in the country, was enacted in 1990. It provided vouchers to 1000 low-income students in Milwaukee. Vouchers could be used at any non-religious private school. In 1992, the Wisconsin Supreme Court upheld the program to a state constitutional challenge in *Davis v. Grover.*[80] In 1995-96, the program provided vouchers worth $3209 to 1115 low-income students. Evaluations of the program have shown no consistent differences in student achievement between program participants and comparable students in the Milwaukee public schools.[81] Last summer, despite these evaluations, Governor Thompson signed into law an expansion of the program to include 7000 students in 1996-97 and 15,000 in 1997-98. Most notably the program was expanded to include eighty religious schools.

Opponents to vouchers sought to block this expansion from taking effect for the 1996-97 school year and received a preliminary injunction in September 1995.[82] Opponents, which include the teachers' union in Milwaukee and the ACLU as plaintiffs, challenged the expansion of the voucher program as a violation of the separation of church and state. Upon Governor Thompson's request, the case was sent directly to the Wisconsin Supreme Court. Hearings began on February 27, 1996. Plaintiff's argued that the expansion violates the Constitution. Secondly, the plaintiffs argued that the Wisconsin Constitution places a stronger prohibition on state aid to religious organizations than does the federal Constitution. The State contended that the decision by the US Supreme Court in *Zobrest v. Catalina*[83] opened the door for state aid going to religious schools. The state also argued that the public money goes to religious institutions only through the private choices of individuals. The State further argued that the primary effect of the voucher program is not to advance religion.

In April 1996, the Wisconsin Supreme Court announced that it was split 3-3 on the question of whether the expansion is constitutional (one justice had recused herself). The case was then sent to the trial court.[84] The decision was regarded as a victory for the plaintiffs as it means that the injunction still stands. The State, however, notes that the plaintiffs expected a majority decision in their favor and that the outcome may be different if the case ever comes back to the Supreme Court (Thompson supporter Judge Crooks replaces one of the Justices voting against the expansion at the end of this month). Currently the State is seeking to remove the trial court judge assigned to the case and to be granted certiorari by the U.S. Supreme Court.

The only other state to pass a law creating a voucher program is Ohio. In 1995, the Ohio legislature approved a $5.5 million pilot program for students in Cleveland.[85] One-thousand five-hundred students selected from a lottery would be provided with vouchers worth $2250. Over 6200 parents applied for vouchers. The program is set up so that 790 recipients are low-income African-

[79] Charles Willie, *"Controlled Choice: a New and Effective Desegregation Method"* (Ann Arbor: U.S. Department of Education and Programs for Educational Opportunity, Desegregation Assistance Center, April. 1995).

[80] 166 Wis. 2d 501 (1992).

[81] *Education Week*, 3/6/96.

[82] *Education Week*, 3/6/96.

[83] 509 U.S. 1 (1993).

[84] *Education Week*, 4/10/96.

[85] *Education Week*, 1/17/96.

Americans, 335 are low-income students from other ethnic groups, and 375 are low-income students currently attending private schools. Fifty-eight schools have been approved for the program including 38 religious schools. The program is to take effect for the 1996-97 school year. A coalition of parents and teachers, however, have filed suit and are seeking an injunction before September. Like the plaintiffs in Wisconsin, this coalition contends that the program violates the separation of church and state, and a federal court has issued a temporary injunction preventing the plan from going into effect this Fall.

Overall, the push for vouchers is alive and well in many parts of the country. In California, Governor Wilson has proposed "opportunity scholarships" worth $4500 for students in the 5% lowest achieving schools beginning in the fall of 1997.[86] Wilson proposed that the vouchers be redeemable at secular and religious private schools. In Florida, the Education Committee in the state legislature approved a voucher bill which would include religious schools.[87] While unlikely to become law in 1996, it is one of many efforts in state capitols to enact voucher programs. In Minnesota, Governor Carlson's voucher proposal died in committee in the wake of the same arguments which have been made since Milton Friedman first proposed vouchers in the 1950's.

Outside of the Hudson Institute study on vouchers, there is little evidence that they either improve educational quality or serve to desegregate schools.

The U.S. Congress recently considered creating a voucher program for students in Washington D.C.[88] The House approved a voucher proposal 244-177 which was attached to the fiscal appropriations bill for the District. In the Senate, a majority supported the overall bill, but never enough to get past a filibuster from the Democrats. In April 1996, House Republicans dropped their campaign for vouchers in D.C., but promised to return to vouchers and to make it a campaign issue. Based on Bob Dole's recent appearance at De La Salle High School, they appear poised to follow through on that promise. Among other things Dole remarked, "At the center of all that afflicts our schools is a denial of free choice," and that "the Clinton Administration has done everything in its power to kill the school choice movement."[89]

The movement for vouchers may be fueled by a report recently released by the Hudson Institute.[90] The report examies the impact of a privately funded voucher program in Indianapolis. This program, one of twenty such private initiatives in the U.S., provides vouchers of up to $800 to 1050 low-income students in Indianapolis. The voucher is intended to cover half the cost of tuition. In 1996-96, students redeemed their vouchers at 67 different private schools in the Indianapolis area. The report finds that voucher students in seven Catholic schools outperformed students in the public schools on the state achievement tests for reading, language and math. Yet a handful of students in seven Catholic schools is a very small sample and it is unclear whether the study controlled for student background characteristics.

Outside of the Hudson Institute study on vouchers, there is little evidence that they either improve educational quality or serve to desegregate schools. Back in the 1970s, a five year voucher pilot program was tried in Alum Rock, California. A Rand Corporation study founds the results of the voucher plan inconclusive, leaving the only significant test at vouchers producing little or no evidence of their efficacy to improve student performance or desegregate schools.[91]

Educational Privitization

A second school reform initiative based on privatization is the provision of educational services by private contractors. The most notable of these private contractors is Education Alternatives Inc (EAI) based in Minneapolis. EAI first burst onto the scene when it was contracted to manage nine schools in Baltimore beginning in 1992. In November 1995, the Baltimore School Board voted

[86] *Education Week*, 1/17/96.

[87] *Education Week*, 4/17/96.

[88] *Education Week*, 4/10/96.

[89] *Minneapolis Tribune*, July 18, 1996.

[90] *Education Week*, 4/24/96.

[91] Peter Cookston, *School Choice: the Struggle for the Soul of American Education* (New Haven: Yale University Press, 1994)

unanimously to cancel its contract with EAI a year and a half before the five year contract was to expire.[92] The Board's president and the superintendent of schools insist that the contract with EAI was not a failure, but that the reason for canceling the contract was primarily financial. They emphasize that EAI was to receive $44 million for the 1996-97 school year, while the district faced a $32 million budget shortfall.

Officials at EAI emphasize their success at transforming the nine schools in Baltimore. Test results initially showed no difference between the EAI schools and the rest of the public schools in Baltimore despite EAI's earlier insistence of a favorable comparison. Since the first year, however, scores at the nine schools have been improving relative to the rest of the district. An independent evaluation of the EAI schools was generally positive. Furthermore, a report issued after the Board canceled the contract showed that students in grades one, three and five at the EAI schools showed larger gains than students at other schools.[93] Critics of EAI in Baltimore, however, point out that EAI spent 11% more per student. The head of the teachers' union remarked that EAI fudged on its promise to provide a superior education at the same cost. District officials are reluctant to credit EAI for the increase in test scores.

Despite the early cancellation, EAI's experience in Baltimore was much smoother than that in Hartford. EAI made headlines in 1994 when it was hired to run all 32 schools in the Hartford school district. Soon after that, however, the contract was changed so that EAI would manage only five schools in addition to overseeing the district's budget operations. In January 1996, the Hartford School Board voted 7-2 to cancel its contract with EAI.[94] Once again, financial considerations were said to be the primary reason. EAI claimed that it had invested $11 million, but had been reimbursed by the district for only $343,000. The district claimed that the contract does not provide for EAI to receive a guaranteed profit. Rather, the contract was structured so that EAI agreed to introduce more efficient management and budgetary procedures and to keep the savings as its profit. The dispute got uglier when EAI officials and subcontractors were barred from entering Hartford schools. In February 1996, Hartford officials agreed to pay EAI $3 million and considered keeping EAI on board to oversee the district's budget.[95]

EAI's experiences in Baltimore and Hartford have not been especially profitable and have seriously jeopardized its future in running schools. With Baltimore and Hartford no longer on board, EAI has no other contracts to manage schools. These are indeed trying times for EAI. In 1995 it also lost several of its top officials. John Golle, the CEO of EAI, stated that the future of his company may be in managing schools in suburban districts where the political air is not so contentious.[96] The stock market has reflected the promise which EAI offers. The value of its stock, which stood at $48 per share in 1994, was only $3 after the cancellation by the Hartford School Board.

A company similar to EAI is Alternative Public Schools Inc (APSI) based in Nashville. In 1995, APSI was contracted to run an elementary school in Wilkinsburg, a suburb of Pittsburgh. Like EAI, its experience has been mired in controversy.[97] The teachers' union filed suit against APSI, objecting most of all to the fact that APSI replaced all the teachers at the school when it took over. The Pennsylvania Supreme Court gave initial approval to the practice of school boards contracting in this way with private companies, but the legal and policy battles seem likely to continue.

In Minneapolis, Public Strategies Group (PSG) was contracted to serve as the superintendent of the district. Peter Hutchinson of PSG has been at the helm since late 1993. In May, 1996, the state Board of Education approved the continuation of Hutchinson's tenure by a vote of 6-3. In 1996, the Minneapolis School Board agreed to a new contract with PSG that runs until August 1998.[98]

[92] *Education Week*, 12/6/95.
[93] *Education Week*, 1/10/96.
[94] *Education Week*, 1/31/96.
[95] *Education Week*, 2/14/96.
[96] *Education Week*, 3/20/96.
[97] *Education Week*, 11/8/95.
[98] *Minneapolis Tribune*, 7/17/96.

Like the original contract, the new one provides PSG with a base salary and opportunities for bonuses up to $336,000 in total compensation based on performance indicators such as student achievement and school safety. The Toledo Public Schools recently announced that it too was considering contracting with PSG to serve as superintendent of that district.[99]

Perhaps the only example of a private company being successful at contracting to provide instructional services to public schools is Sylvan Learning Centers based in Columbia, Maryland. Originally known for selling remedial instruction services to the parents of middle class students in the suburbs, Sylvan has been making inroads into urban school districts.[100] Sylvan first contracted with public schools in 1993 and now has contracts with nine big city school districts including Baltimore, Chicago, Washington D.C. and St. Paul. Many of the districts have used federal Title I money to pay for Sylvan's services. Sylvan typically provides intensive remedial instruction in reading for elementary students with a student-teacher ratio of only 3:1. Sylvan has been less controversial than companies like EAI and APSI because, unlike these companies, Sylvan does not seek to take over a school or a district. Officials from these districts, including classroom teachers, have spoken quite favorably of Sylvan. A report of Sylvan's efforts in Baltimore told of promising results in student achievement. In the last four years, Sylvan's profits have gone from $15 million to $65 million.[101]

Another private education program is the Edison Project. Launched by Chris Whittle in 1992, the Edison Project initially promised to reinvent education along the lines of Thomas Edison's invention of the light bulb. With $1.2 billion in funding available, Whittle and Benno Schmidt, former president of Yale, spoke of their private, for-profit schools providing "twice the education for half the price." Whittle and Schmidt planned on opening 200 schools by 1996 and eventually over a thousand schools. Since then, the plans for the Edison Project have been scaled back substantially. Chris Whittle's media empire crumbled in 1994 which led to a battle between he and Schmidt for control of the Edison Project. Somehow, however, the Edison Project survived and the first four Edison schools opened in the fall of 1995.[102] The four schools are located in Boston, Wichita, Mt. Clemens Michigan, and Sherman Texas.

Edison's research team, which included Schmidt and John Chubb of the Brookings Institute, developed a curriculum based on several principles.[103] Edison schools have a school day which is 90 minutes longer than the typical school and a school year that is longer by twenty days. Each student is to be provided with a computer in their home and each teacher with a laptop. Spanish instruction is provided to all students beginning in kindergarten. Ninety minutes of reading instruction is provided in groups of fifteen. Edison schools are also characterized by cooperative learning techniques and a "rigorous curriculum" with a heavy emphasis on the classics, character education and technology. Much like EAI, the Edison Project takes in revenue by contracting with school districts to operate individual schools.

Despite its many failings in the last several years, the Edison Project received an enormous boost with a front page story in the *New York Times*. The *Times* reported that the first year of the Edison school in Wichita had been a success. The article reported that nearly everyone in Wichita is pleased with the progress during the first year. At a school with 75% of the students receiving free or reduced lunch, attendance improved to 96% since the Edison Project took over. Dropouts declined from 36% to 7%. Perhaps most important to Whittle and Schmidt are that investors are once again interested and that the four districts want to turn more schools over to the Edison Project. Whittle plans on operating twelve schools nationwide in 1996-97 and claims to be in "serious talks" with 25-30 school districts.

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[99] *Minneapolis Tribune*, July 10, 1996.
[100] *Education Week*, 11/29/95.
[101] *Education Week*, 3/20/96.
[102] *Education Week*, 9/6/95.
[103] *Education Week*, 9/6/95.

The Edison Project has always had plenty of critics and this criticism has not subsided. The first thing critics point out is that the Edison Project does nothing truly innovative other than spend more money.[104] Hoping to profit from early success, it spent $75 million in 1995-96 while running the four schools.[105] Assuming that there are 500 students in each of the four schools, this translates to a whopping $37,500 per student. These critics warn that as time goes on, the Edison Project's need to generate a profit will force it to cut costs by eliminating services necessary for a decent education. A second strand of criticism is that Edison schools will cater to more affluent students while excluding those from disadvantaged backgrounds. Since its inception, Whittle and Schmidt have claimed that the Edison schools will include a healthy mix of poor and minority students.

The future of the Edison Project remains very much uncertain. If its success depends on its ability to show that it can boost achievement for all students while spending the same amount of money, there are no reasons to believe it will survive. On the other hand, if its success is dependent on occasional reports in the popular press of its effectiveness along with a continued pro-business climate in the world of education, the Edison Project may be around for awhile.

While equitable funding and desegregation plans are necessary components of education policy, the type of desegregation plan is similarly important. Desegregation plans that do not cross district lines, especially when the districts are small, do not fully address the problem of segregation. Boston, for example, which has a relatively small school district and did not include many middle-class white students in its desegregation plan, was and continues to be beset by segregation problems. Charlotte, North Carolina, however, included middle-class white students in its metro-wide desegregation plan and has had extensive desegregation even two decades after the initial plan was effected.

Metro-wide solutions are also important as the old conception of the suburbs is changing. Millions of minority families have relocated to the suburbs but have not left segregation behind. The suburbs of the nation's largest metropolitan areas contained 1.3 million black and 947,000 Latino students in 1991, but two-thirds of the Latinos and three-fifths of the blacks were in predominantly minority schools.[106] Suburbs can be even more vulnerable than cities to school segregation since they are much smaller, have a less diverse housing market, and are deeply affected by neighborhood-level changes in the housing market. As with urban areas, suburbs with small school districts are particularly at risk of becoming segregated by race and socio-economic status. Desegregation plans need to be examined in connection with the local context, rather than adherence to one ideal model. Different situations may require adapting elements of a variety of desegregation models.

Magnet and Charter Schools

Magnet schools were developed in the 1970s as a means of retaining students in public schools and as a means of desegregation and they became a powerful option as a voluntary school desegregation option. in 1991, the United States Department of education commissioned the magnet Schools Study through the American Institute for research. The study analyzed magnet programs in public school systems across the country to find what made magnet programs distinctive and whether they offered equal opportunities to different students.

The number of students served by magnet across the country has tripled over the past decade to include approximately 1.2 million students.[107] The number of magnet schools and number of districts with magnet schools has doubled in the same period. Magnets have often been perceived as concentrating the higher-achieving students in a district through a qualification process; yet the study found that 58 percent of the districts surveyed used a lottery system to assign students to

[104] *Education Week*, 9/6/95.

[105] Troy Duster, "Desegregation and the Kansas City, Missouri School District," Institute for the Study of Social Change, University of California Berkeley, November 16, 1994 report.

[106] Gary Orfield, *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, (A Report of the Harvard Project on School Desegregation to the National School Boards Association, December 1993), 15 21.

[107] Rolf K. Blank, Roger E. Levine, and Lauri Steel, *"After 15 years: Magnet Schools in Urban Education," Who Chooses? Who Loses?*, 157, (New York: Teachers College Press, 1996).

magnet schools, with only one-third of the schools studied using specific selection criteria such as test scores, grade point averages, or teachers' recommendations.[108] For minority students, magnet schools showed overall favorable enrollments: 61 percent of all magnet schools were minority and 62 percent of the students overall in magnet districts were minority. Yet if the racial composition of the district was markedly minority-dominant, the proportion of minority students in magnet schools would be less than that of the population (68% in magnet programs, 80% in the population). The inverse relationship was also the case in majority-white districts: the proportion of minority students in magnet programs (46%) was greater than that of the district population (31%).[109] By analyzing the programs within the schools, the study found evidence of within-school segregation: 61% of the magnet program students were minority, but 71% of the students attending the school in which the magnet program was located were minority. The conclusion is that white students have disproportionally opted to utilize magnet programs.

Low income students also demonstrated strong enrollments in magnet programs: they constituted 47% of magnet enrollments. Yet 51% of students in magnet districts were low-income. In majority-white and more affluent districts, low-income students has disproportionally high enrollments. Limited or non-English proficient students and special education students had lower enrollments in magnet programs- their enrollment in magnet programs was approximately a third lower than in the district as a whole.[110]

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Magnet programs appear to be attractive voluntary desegregation options. They often have more diverse curricula with smaller class sizes and are benefitted by additional staff funding. Yet their usefulness to minority students seems strongly affected by racial makeup of the district. This is also the case with low-income students who similarly have lower enrollments in districts in which they represent a majority. Also, overall access to magnet programs qualifies their viability as both a voluntary choice option and a desegregation strategy: only about one-quarter of all districts could accommodate the number of students wanting to enroll in magnet programs. Slightly more than half of the districts studied had waiting lists for magnet programs, and approximately 60% of the students on those lists were minority.[111]

Transportation and outreach of information about the magnet programs also can provide a hurdle to equal enrollment opportunity. As Thomas Kane noted in his analysis of the effects of Pell Grants on student's post-secondary school choices, disseminating information about alternative educational opportunities and the process of delivering those opportunities to low-income families has often resulted in lower participation rates.[112] Transportation is also a determinative factor: for elementary magnet schools, approximately 85% of the districts provide transportation or partial subsidies. The number drops to the 70% range for junior and high school students.

Overall, magnet programs can be powerful options for both school districts and students, but their benefit needs to be examined in terms of the utility to and impact upon minority and low-income students.

3. *Desegregation Plans and Case Studies*

Desegregation plans, whether voluntary or court-ordered, are another practice school districts have taken to integrate their schools. The scope and results of these plans vary widely.

For example Indianapolis had a metro-wide plan that had 46 percent of the black students in majority white schools and almost none in intensely segregated schools during the mid 1980s when there was a large growth in the city's black population. Yet many states with court-ordered desegregation busing have lifted their more stringent desegregation orders. Mobile, Alabama is one

[108] *Id.*

[109] *Id.* 167.

[110] *Id.* at 167.

[111] *Id.* at 169.

[112] Thomas J. Kane, *"Lessons from the largest School Voucher Program: Two Decades of Experience with Pell Grants," Who Chooses? Who Loses?* 183, (Teachers College Press, New York, 1996).

such city which was permitted to end its busing program in the mid 1980s. In 1987, the district served 68,000 students, including roughly one-eighth of Alabama's black students, and maintained above-average white enrollments; this balance has begun to erode. Oklahoma City was also allowed to dismantle its desegregation plan in the mid 1980s and saw an increase of 6 percent in a two-year period of blacks in intensely segregated schools; the typical black student was now in a school with 6 percent fewer whites than before the stop of the desegregation plan. There was also a 10 percent decline in the exposure of blacks to white students.

Milwaukee

Milwaukee, with court-ordered desegregation efforts begun in 1976, had a limited suburban exchange program that did little to counteract a declining white population in the central city. In 1979, an agreement was reached that provided for 75 percent of the system's children to be educated in racially balanced schools (balanced being defined as 25-60 percent black students). Before the desegregation began, only 14 of 158 schools in Milwaukee were integrated; by 1988, 112 of 138 schools were integrated.[113] Milwaukee, its suburban districts, and the state later agreed to expand this effort to a metro-wide voluntary transfer and voucher plan. While achievement levels for students have not improved under the Milwaukee plan, studies point to inequities in the housing and job markets that have hindered educational integration efforts.[114] Experts suggest that desegregation, coupled with housing integration initiatives, should be expanded within the interdistrict and intradistrict plans for the greater Milwaukee community.

Norfolk

Norfolk, Virginia, serves as another example of dismantled desegregation leading to resegregation. Neighborhood schools and the failure of desegregation efforts were cited as the reasons prompting an end to desegregation in Norfolk, which spread to other cities across the nation. Neighborhood schools in the city did not stem the movement of white families out to the suburbs or "white flight," the proportion of white to black students has substantially decreased, or increase parent participation, as had been suggested. Rather, the concentration of the parents in poverty more strongly affects parental involvement than their relative proximity to the school. Also, the Norfolk schools have witnessed a widening of the achievement gap between black and white students since reverting to segregated, poverty-concentrated neighborhood schools.[115]

Hartford

Perhaps the most important recent desegregation challenge has occurred in Hartford Connecticut and the Connecticut Supreme Court a decision in *Sheff v. O"Neill*[116] that is sure to have a profound impact upon school segregation for years to come.

In *Sheff*, the issue involved the role of the state in perpetuating de facto racial, ethnic, and income discrimination. Specifically, the plaintiffs in *Sheff* were parents of low income and minority children who lived in Hartford, Connecticut. According to their claim, within the city of Hartford, over 90% of the school children were minority while the minority population in the twenty-one surrounding suburbs was less than 10% for all but seven suburbs. Significantly, the school composition reflected residential housing demographics in Hartford and the surrounding suburbs.

Sheff and the other plaintiffs charged that during the time period that population growth had shifted and occurred in Hartford and the suburbs, the state of Connecticut had been responsible for drawing school district lines that paralleled the municipal boundaries. The state's failure to account for the changing racial demographics and redraw the school district lines implicated the state's

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[113] Wisconsin Advisory Committee to the United States Commission on Civil Rights, "Impact of School Desegregation in Milwaukee Public Schools on quality Education for Minorities. . .15 Years Later," August 1992 report, 12.

[114] *Ibid.*, 27-31.

[115] Christina Meldrum and Susan Eaton, "Resegregation in Norfolk, Virginia: Does Restoring Neighborhood Schools Work?" Report of the Harvard Project on School Desegregation, 1994, 42 55.

[116] 1996 WL 380640 (Conn.)).

constitutional duty not to segregate. The Connecticut Supreme Court agreed. In its ruling in *Sheff v. O'Neill*, the state Supreme Court ruled that because the State of Connecticut was responsible for drawing the school district lines, it failure to redraw those lines in a way that reflected the changes in racial demographics violated the state constitutional duty not to segregate. Significant in this case was the Court's claim that even though there was no evidence of intent on the part of the state to segregate low income and minority populations in Hartford, it was still responsible for the de facto discrimination that resulted.

What *Sheff* stands for and its implications are difficult to ascertain. First, the decision is a clear statement that even if private housing patterns are the product of individual choice, school patterns that result from those housing patterns may implicate state culpability for segregated school patterns even if the state or the suburbs did not intend to discriminate. Hence, inaction or the failure to address some types of educational patterns that result from housing choices may still make governmental and school entities legally responsible to act. Second, *Sheff* suggests that more metropolitan-wide solutions may be required to address the problem of housing and educational segregation. By that, *Sheff* seems to stand for the proposition that entire metropolitan areas share the legal responsibility for the concentration of racial minorities and low income populations. Finally, given that the *Sheff* court left up to the state legislature to define a remedy that would be approved by the Court, what will be approved and what the court will accept cannot be ascertained at this time.

Overall, *Sheff* is a significant precedent sure to encourage other similar suits around the United States. It may very well provide precedent to suits pending in Minneapolis where similar issues have been raised.

B. HOUSING

Government efforts to combat discrimination in housing and to aid poor communities of color in finding and maintaining affordable housing have been of mixed success. While ambitious acts such at the Fair Housing and Community Reinvestment Acts have been passed (and to some degree implemented) and judicial precedents to force fair distribution of regional resources to all residents set, the impact of these innovations on making housing available to low and moderate income communities, especially communities of color, does not seem to have been great. This, fortunately, has not stopped continued efforts to revise and improve existing legislation and to experiment with new ways of making affordable housing accessible to poor communities of color.

1. *Fair Housing Legislation*

The intent of fair housing legislation, such as the Fair Housing Act (FHA) of 1968, is to fight discriminatory housing practices in the private market, particularly discriminatory real estate, mortgage, lending, and insurance practices. The Act, amended in 1988, includes not only race but also sex, religion, familial status, handicap, color, and national origin as legally recognized categories of discrimination. Debate over the Act's impact on racial and economic segregation centers on whether levels of segregation have increased since the FHA's enactment in 1968. The FHA has proven highly ineffective at eliminating discriminatory housing practices. The inability of the FHA to compel private and public actors to cease discriminatory practices is not coincidental.[117] To facilitate the passage of the FHA, Senator Everett Dirksen of Illinois dramatically weakened its enforcement mechanisms by eliminating the Department of Housing and Urban Development's (HUD's) authority to hold hearings, issue complaints, and publish cease and desist orders. Senator Dirksen's amendment also reduced penalties for violations of the FHA.[118] Moreover, if HUD could not resolve a dispute, the FHA only allowed for HUD to refer the case to the United States Attorney General. The FHA authorized HUD to refer such cases only if it had evidence of a pattern or practice of discrimination or if the alleged discrimination raised an issue of general

[117] *Douglas Massey and Nancy Denton, American Apartheid: Segregation and the Making of the Underclass* 210-211 (1993).

[118] Charles Lamb, Congress, the Courts, and Civil Rights: The Fair Housing Act of 1968 Revisited, 27 Vill. L. Rev. 1115, 1127 (1982).

[119] Massey & Denton, at 193.

importance.[120] Officials, however, rarely considered discrimination against an individual African-American to satisfy these criteria. According to a study by the United States Commission on Civil Rights, HUD only referred ten percent of cases it could not resolve to the Attorney General, a very small percentage of which the Attorney General ever then pursued.[121]

Congress passed the 1988 amendments to try to rectify the inadequacies of the FHA by strengthening the enforcement provisions of the statute. The amendments have extended the time to file a housing discrimination complaint from 180 days to two years, allowed attorney's fees and court costs to be recovered by successful plaintiffs, and raised punitive awards to $10,000 for a first offense. The Attorney General, Department of Justice, and HUD also now have authorization to take a more aggressive approach to addressing housing discrimination.[122]

Despite these amendments, the FHA remains a weak mechanism for ensuring meaningful access to suitable housing for people of color. Even with fair housing legislation, segregation has indeed worsened in the U.S.'s cities with the largest black populations.[123] The high correlation between race and poverty means than many low-income citizens also continue to lack sufficient access to housing because of the inability of the FHA to prevent many forms of discrimination. Like the original legislation, the substance of the amended FHA reflects a misidentification of the problem as individual acts of discrimination in a larger race-neutral framework. The amended FHA therefore ignores the reality and impact of systemic and systematic discrimination. Moreover, the FHA's case-by-case approach relies heavily on an individual claimant's willingness to take on the tremendous financial, temporal, and emotional burden of enduring a protracted litigation process. Furthermore, the success of the FHA's piecemeal approach largely hinges on the extent which the Attorney General, the Justice Department, HUD and the President wish to advance the goals of the FHA.[124] One election can reorient one or all of these offices and thus have a dramatic impact on the efficacy of the FHA. The November 1994 elections provide a case in point. Congress is now attempting to eliminate, for example, the Justice Department's power to bring pattern or practice cases on its own initiative under the FHA.[125]

Another fundamental flaw in the FHA is its continued reliance on a tort or criminal liability model that requires the identification of a violation, the detection of a perpetrator, and proof at trial that the perpetrator's act has violated federal housing statutes. Using this model poses several problems. Most injured parties do not recognize when the law has been violated. In addition, realtors, lenders, and owners often engage in subtle forms of discrimination, so an aggrieved party has significant difficulty establishing liability. Even in the context of the more reasonable disparate impact standard, individual claimants have substantial difficulty showing that they have been discriminated against in a legally recognizable way. As a consequence, only a few of the meritorious cases actually have been litigated, and even fewer have resulted in a favorable decision for a claimant.[126] In other words, the case- by-case approach embodied in the FHA allows the overarching system of exclusion, and therefore residential segregation and racial inequality, to persist. It should be noted, however, that even though the FHA appears to be of limited and unreliable use, there are studies which indicate that, when looking at all metropolitan areas, the FHA has had an effect in newly constructed suburban developments and apartment complexes, certainly more so than in established neighborhoods where its record is quite poor.[127]

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[120] George Metcalf, Fair Housing Comes of Age 3 14, 85-86 (1988).

[121] Massey & Denton, at 197.

[122] Massey & Denton, at 210-11.

[123] Massey & Denton, at 210.

[124] Massey & Denton, at 212.

[125] H.R. 1362, 104 th Cong. 1st Sess. sec. 145 and sec. 147 (1995).

[126] John Boger, *Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction* 71 N.C. L. Rev. 1574, 1584 (1993) (discussing the difficulties experienced by plaintiffs when trying to seeks a remedy from federal courts for housing discrimination).

[127] Reynolds Farley and William Frey, "Changes in the Segregation of Whites from Blacks During the 1980s: Small Steps Toward a More Integrated Society," *American Sociological Review*, 59(1994): 23 45.

Discrimination In the Housing Market: Fair Housing Audits

The Fair Housing Audit section reviews the current state of housing discrimination in the housing market, especially in the real estate industry, as documented in the literature on fair housing audits. This section reviews what constitutes housing discrimination under the Fair Housing Act of 1968 and reviews the history, methodology, and findings of the major national fair housing audits, the Housing Market Practices Survey and the Housing Discrimination Study.

Why Is Fair Housing Testing Necessary?

The impetus for the Housing Market Practices Survey (HMPS) of 1977 was HUD's need for an accurate evaluation of the enforcement of the Fair Housing Act of 1968.[128] The fair housing audit was selected as the most direct method of testing for discrimination in the housing market.[129] The purpose of the HMPS was to study housing discrimination against African Americans. The HMPS was a successful valuative tool in that it provided strong evidence, and the Housing Discrimination Study of 1989 built on its methodology.[130] In addition to providing data on the level of discrimination against Blacks, the Housing Discrimination Study (HDS) was designed to estimate the level of discrimination against Hispanics and to produce an accurate measure of racial and ethnic steering, whereby minority housing seekers are 'steered' away from predominantly white neighborhoods by real estate agents.

What Are Fair Housing Audits?

The HDS and the previous 1977 Housing Market Practices Survey (HMPS) sought to test the extent and severity of racial discrimination in the housing market through conducting a comprehensive series of fair housing audits. A fair housing audit consists of a set of two-person teams, similar in all respects except for race, trained as auditors who respond to a randomly selected sample of apartment for rent or homes for sale. Teammates approach separately a sampled apartment or agency and pose as homeseekers. After each visit teammates independently record their experiences on detailed forms. Finally, a third party compares the teammates' audit forms looking for any systematic differential treatment.[131] Fair housing audits are currently the most direct methodology developed to date to test for discriminatory behavior in the housing market.[132]

What Do Audits Test?

As individuals move through the different stages or transactions of the home-buying or renting process there are multiple opportunities for discrimination in the private housing market. At the start of the transaction there is a house or apartment available for sale or rent and a prospective buyer or renter seeking housing. Discrimination can occur if the housing opportunity is advertised or marketed in such a way that qualified minority homeseekers do not learn about it, if agents refuse to do business with minority customers or treat them unfavorably in their initial encounter,

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[128] It is HUD's responsibility to evaluate the enforcement of the FHA. Ronald Wienk, et al. 1979. Measuring Discrimination in American Housing Markets: the Housing Market Practices Survey. Washington, DC: US Department of HUD. pp. 4 11, cited in John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995, pp.20 note 8.

[129] Ronald Wienk, et al. 1979. Measuring Discrimination in American Housing Markets: the Housing Market Practices Survey. Washington, DC: US Department of HUD. George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165 175. John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995.

[130] John Yinger. Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination, New York: Russell Sage Foundation, 1995. pp.20-1.

[131] George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165-175.

[132] George Galster (1992), "Research on Discrimination in Housing and Mortgage Markets: Assessment and Future Directions," Housing Policy Debate 3(2): 639-673.

[133] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. Turner was one of the coauthors of the HUD Housing Discrimination Study and the findings she discusses are those of that study.

if agents fail to follow up business with minority customers, if the final terms of sale or lease for minority customers are unfavorable, or (in the sales market) if minority customers are unable to obtain mortgage financing or homeowners' insurance.[133]

The actual extent of ethnically and racially discriminatory action in housing markets is not known. However, of all the housing transactions that have been investigated, significant ethnic and racial discrimination has been found.[134] The most clearly demonstrated discrimination occurs in the interaction between real estate brokers and homeseekers, both renters and buyers. Most empirical research on housing market discrimination analyzes only the initial encounter between a homeseeker and a real estate or rental agent.[135] Within the confines of this initial encounter, a number of discriminatory practices can occur, including unfavorable treatment with respect to information about housing availability, rental terms and conditions, assistance with financing, overall sales effort, and neighborhood steering.

The HDS reports on the following categories of housing availability, information and assistance, and racial and ethnic steering. The housing availability category includes measures of availability of the advertised unit and the number of other similar available units, the number of units shown and units recommended to the homeseeker by the agent. HDS found that black and Hispanic homeseekers experience discrimination in three key areas of information and assistance: terms and conditions for rental housing, financing assistance for home buyers, and overall sales effort.[137] Racial and ethnic steering is defined as behavior that directs a customer toward neighborhoods in which people of his or her racial or ethnic group are concentrated. The HDS collected geographic information on the houses shown or mentioned to auditors which enabled it to analyze the prevalence of steering. Another discriminatory practice which the neither the HMPS nor the HDS tested for is blockbusting, the illegal real estate practice of inducing 'white flight' or panic-selling in a neighborhood in racial transition.

Fair housing audits document the existence and extent of these practices through measurements of the incidence and severity of unfavorable treatment. Incidence was defined as the share of cases in which the minority partner received less favorable treatment than the majority partner. Severity represents the difference between the average outcome for majority auditors and the average outcome for minority auditors. Severity measures are valuable in that they reflect the magnitude of the gap between the treatment received by minority and majority homeseekers.

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[134] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. Robert Lake. 1981. "Housing Search and Discrimination," in his The New Suburbanites: Race and Housing in the Suburbs. New Brunswick, New Jersey: Center for Urban Policy Research; George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165 175; Margery A. Turner, Raymond J. Struyk, and John Yinger. 1991. Housing Discrimination Study: Synthesis. Washington, DC: U.S. Department of Housing and Urban Development.

[135] Anthony Downs. 1992. Policy Directions Concerning Racial Discrimination in US Housing Markets. *Housing Policy Debate* (1992), 3 (2): 685-745.

[136] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185 216. p. 191. Turner was one of the coauthors of the HUD Housing Discrimination Study and the findings she discusses are those of that study. Turner also notes that there have been no major discrimination studies of systematic differences in follow up encounters. Further sources on empirical research: Robert Lake. 1981. "Housing Search and Discrimination," in his The New Suburbanites: Race and Housing in the Suburbs. New Brunswick, New Jersey: Center for Urban Policy Research. (From ref. in Promoting Housing Choice.); George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165-175.

[137] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. pp.199.

Fair Housing Audit Findings

The most comprehensive data on the state of housing discrimination has been documented in the largest fair housing studies to date: the Department of Housing and Urban Development's two national fair housing studies - the Housing Discrimination Study (conducted in 1989) and the Housing Market Practices Survey (conducted in 1977).[138] The HMPS used audit teams to survey 40 metro areas.[139] The HDS conducted 3,800 audits in 25 metro areas nationwide. What constitutes discrimination in these HUD studies is systematic differential treatment of minorities and whites. Based on the Housing Discrimination Study estimates, black and Hispanic homeseekers encounter discrimination approximately half of the times that they visit a rental or sales agent to inquire about advertised housing opportunities.[140] Housing agents showed 25% fewer housing units to minority customers, steered them to minority neighborhoods, and gave them far less assistance in finding housing that met their needs.[141] The findings of the mean incidence of discrimination in categories of availability and treatment of the 1977 HMPS are consistent with other fair housing audits conducted in the 1980s.[142] The overall comparison of HDS and HMPS results provides no basis for concluding that the incidence of unfavorable treatment experienced by black homeseekers has neither risen or declined since the late 1970s.

A review of seventy-one fair housing audits conducted in individual localities during the 1980s conservatively estimated that Blacks seeking homes for sale face a 20 percent chance of discrimination on average. Price/financing, availability, qualifying requirements, and information given are the most probable types of discrimination for Blacks seeking homes. Blacks seeking rental dwellings face a 50 percent chance of encountering discrimination, with availability, application, and information given being the most prevalent categories of discrimination. Hispanics seeking rental dwellings face a 33 percent chance of discrimination. Information asked and given and courtesy were the most likely types of discrimination. In terms of severity, the average Black homeseeker was told about two fewer homes for sale than the average Anglo. The average Black apartment seeker was told about two fewer units and was shown one fewer than the Anglo counterpart and the Hispanic apartment seeker was told about one fewer and shown one-quarter fewer unit.[143] Though these composite results are not nationally representative they give a rough indication of the persistence of a significant degree of discrimination in housing markets all-over the United States and as such are consistent with the findings of the HMPS and the HDS.[144]

Steering

The HDS yielded new findings on the marketing practices which produce steering. The net incidence in the HDS of cases in which the minority auditor was steered to census tracts with a greater minority concentration than was her white teammate was 6.2 percent for blacks and 4.8

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[138] George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165 175. Galster contacted over 200 fair housing organizations nationwide and compared the results of 71 fair housing audits. The HMPS and the HDS are in addition to these and are the only comprehensive nationwide fair housing audits.

[139] Wienk, Ron et al. 1979. Measuring Discrimination in American Housing Markets: The Housing Market Practices Survey. Washington, DC: U.S. Department of Housing and Urban Development.

[140] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. p. 189.

[141] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995, introduction, citing evidence from Margery A. Turner, Raymond J. Struyk, and John Yinger. 1991. Housing Discrimination Study: Synthesis. Washington, DC: U.S. Department of Housing and Urban Development.

[142] George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165-175. p.172.

[143] George Galster (1990), "Racial Discrimination in Housing Markets during the 1980s: A Review of the Audit Evidence," Journal of Planning Education and Research 9(3):165-175. p.172. Galster also noted the limits of comparability across audit reports using similar but not identical or consistent categories.

[144] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. p.200.

percent for Hispanics.[145] However, the concentration of available housing that was advertised in major newspapers from which the auditors randomly sampled housing units was in largely white tracts. The HDS found that houses in largely minority and integrated neighborhoods are not marketed and sold in the same way. They are not advertised in newspapers and not shown to customers who inquire about advertised units. These are findings of the HDS which include houses and apartments for sale and rent.[146] Furthermore, different types of real estate firms sell houses in largely black and integrated areas than in largely white areas. Firms that sell in a largely black tract tend to have fewer listings than firms that sell in a largely white tract.[147]

Three different exploratory studies in Washington, Milwaukee, and Boston of housing marketing support the hypothesis that black and integrated neighborhoods are marketed differently than predominantly white neighborhoods, and that black and integrated neighborhoods are less likely to be advertised in the newspaper and less likely to be marketed through open houses.[148]

Future Research on Housing Discrimination

A 1992 study noted the relative absence of audit studies in the following areas: audits focusing on differential marketing of minority neighborhoods, including seller audits; audits focusing on discrimination by real estate and rental agents subsequent to the first encounter with a homeseeker; and audits focusing on the treatment of homeseekers in minority and integrated neighborhoods.[149]

Fair Share Housing

Minnesota's 1976 Land Planning Act requires all municipalities and townships in the seven-county metro area to demonstrate how they will meet their ten-year fair share of the area-wide need for subsidized housing, and develop policies to facilitate model-cost market-rate housing.[150] California and Oregon have enacted a state land use planning requirements similar to Minnesota's.[151] Neither state's fair-share policy addresses racial patterns in housing. New York State experimented with a state Urban Development Corporation, established in 1968 empowered to override local building and zoning codes if necessary in order to develop new towns and housing with a mix of income groups. 1973 the UDC's override authority was revoked by the state legislature and in 1975 the UDC declared bankruptcy.[152]

The state of Massachusetts adopted guidelines in 1969 requiring local governments to take regional needs into effect in the implementation of local planning and development standards by increasing housing choices in its so-called Anti-Snob Zoning Law. The law allows developers of projects that are at least 30 percent low-income affordable to bypass local planning commissions in securing permits. Developers have won most of the appeals filed as a result of the law. As a result of the law, the state claims that 20,000 units of affordable housing have been created.[153] Rhode Island and Connecticut have created similar legislative programs based on Massachusetts' Anti-Snob Zoning

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[145] Margery Turner, Maris Mickelsons, and John Edwards. 1991. Housing Discrimination Study: Analyzing Racial and Ethnic Steering. Washington, DC: U.S. Department of HUD. Cited in John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995.

[146] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216. pp. 207.

[147] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. pp.58.

[148] Harriet Newburger. 1992. Paper presented at the national meeting of the American Real Estate and Urban Economics Association, New Orleans, LA; George Galster et al. 1987. Racial Differences in Real Estate Advertising Practices: an Exploratory Case Study. Journal of Urban Affairs 9:199-215.

[149] Margery Austin Turner, "Discrimination in Urban Housing Markets: Lessons from Fair Housing Audits," in Housing Policy Debate (1992) 3(2): 185-216.

[150] Barbara Lukermann and Michael P. Kane. 1994. Land Use Practices: Exclusionary Zoning, de facto or dejure?, Minneapolis: CURA. pp. 3

[151] California Government Code, Section 65584.

[152] W. Dennis Keating. 1994. *The Suburban Racial Dilemma: Housing and Neighborhoods*. Philadelphia: Temple University Press. pp.36-38.

[153] Sylvia Lewis, "A Parallel Experience," in Planning 58 (May 1992): 14. Lewis interviewed Maurice Corman, chair of the state's housing appeals committee. The law is also known as Mass. Statute Chapter 774

Law.[154] In 1988 the state of Connecticut enacted legislation creating a pilot program for voluntary regional fair-share housing compacts.[155]

2. *Fair Share Housing Policy*

The concept behind Fair Share housing policies is that every community has a responsibility to help meet a region's low and moderate income housing needs. Fair share housing policy is constructed to prevent the use of zoning regulations to exclude low- and moderate-income housing. The precedent for fair share policies was set by the Supreme Court of New Jersey in 1975 in *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*.[156] In Mount Laurel I, the court recognized that the municipality's zoning ordinance had an effect beyond its boundaries and implicated something of fundamental import: housing. The court held that to promote affirmatively the general welfare, the welfare of people living outside — as well as within — the municipality must be furthered.[157] The court concluded that developing municipalities must fulfill the general welfare obligation inherent in the equal protection and substantive due process guarantees of the New Jersey Constitution by affirmatively, through land-use policies and regulations, creating a realistic opportunity for meeting their fair share of the regional need for low- and moderate-income housing.

State legislatures have enacted Fair Share legislation to encourage increased construction of affordable housing. Fair Share statutory schemes generally require each region and its constituent communities to provide an equitable portion of the state's affordable housing need.[158] New Jersey has led the Fair Share movement with legislation that requires municipalities to take definitive action to provide affordable housing. Inclusionary zoning is one of the most popular techniques used to compel the provision of affordable housing. Density bonuses, which increase the permitted density of a development as the amount of affordable housing provided increases, and mandatory set-asides, which require developers to reserve a certain portion of units in a development for low- or moderate-income residents, provide the two main mechanisms for inclusionary zoning. In addition to requiring the use of density bonuses and mandatory set-asides, the New Jersey statute authorizes the use of tax abatements infrastructure improvements and expansion, the donation or use of municipally owned land, and the allocation of public funds to encourage the construction of affordable housing.[159] Oregon has also pioneered Fair Share legislation. Its laws compel municipalities to designate buildable lands and provide for the construction of needed housing through flexible zoning measures. New Hampshire has adopted legislation requiring all communities to provide reasonable opportunities for the siting of manufactured housing, a popular form of affordable housing in New Hampshire suburbs.

California's Fair Share statutory scheme follows a different approach and compels every community to adopt a long-term development plan that has a housing element. This element must include five-year projections for way to meet any outstanding housing needs. Massachusetts' Fair Share legislation authorizes yet another approach; it streamlines the appeals process for developers, facilitating challenges to zoning that unduly burden the construction of affordable housing. To ensure compliance, Massachusetts also withholds federal and state assistance grants from municipalities that implement exclusionary zoning ordinances or other unreasonable restrictions on private development of low- income housing.[160]

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[154] Sylvia Lewis, "A Parallel Experience," in Planning 58 (May 1992): 14.

[155] W. Dennis Keating. 1994. *The Suburban Racial Dilemma: Housing and Neighborhoods*. Philadelphia: Temple University Press. p.44.

[156] Southern Burlington County v. Township of Mount Laurel, 336 A.2d 713 (N.J. 1975).

[157] 336 A.2d at 725, 727 28 (citing N.J. CONT. art. I para. 1; Kunzler v. Hoffman, 225 A.2d 321 (1966); Roman Catholic Diocese of Newark v. Ko Ho Kus Borough, 202 A.2d 161 (1964)).

[158] Justin D. Cummins, Recasting Fair Share: Toward Effective Housing Law and Principled Social Policy, 54 Law & Inequ. J. 339, 364 (1996).

[159] Id., at 365.

[160] Id., at 365-366.

One of the major outgrowths of existing Fair Share policies has been a more systematic approach to providing affordable housing. In this context, system-wide enforcement in place of the ineffectual case-by-case method of the FHA, becomes feasible. In New Jersey, between 1983 and 1988, 23,000 housing units were completed or under development pursuant to New Jersey's Fair Share legislation. In contrast, only 1,700 federally subsidized units were constructed in the state between 1985 and 1988. The Massachusetts Fair Share policies have also enjoyed some success, reducing the prevalence of exclusionary zoning and thus facilitating a greater availability of affordable housing.

New Jersey, between 83 and 1988, 23,000 using units were npleted or under elopment pursuant to w Jersey's Fair Share islation.

Despite their potential, Fair Share policies continue to have only limited effectiveness. Even in New Jersey, where Fair Share has seen the most success because of greater state intervention, the overall results have been mixed.[161] New Jersey's legislation minimizes the ability of developers to bring zoning challenges direct to court. The statutory scheme does not require communities to market their units affirmatively in communities of color or low-income central-city neighborhoods. Its Fair Share policies allow suburbs to pay central cities to bear up to fifty percent of suburban affordable housing obligations. As well New Jersey's legislation lacks racial goals and otherwise fails to ensure future racial diversity in affordable housing. This means that the main beneficiaries of New Jersey's Fair Share legislation continue to be marginal middle-income or temporarily low-income whites, such as students, young married couples, and divorcees.[162] The policies have largely ignored people of color, especially low-income individuals. New Jersey's results have not been substantially better than anywhere else. States that take a less assertive approach, such as Pennsylvania and Connecticut, have even less success prompting the building of affordable housing generally, let alone addressing the needs of low-income people of color living in central cities.[163]

3. *Housing Assistance Programs*

Housing Assistance Programs: Section 8

United States Department of Housing and Urban Development Section 8 Housing Assistance Programs have been used for desegregation and as an anti-concentration strategy in metropolitan areas. Of the many public housing programs administered under Section 8 of the United States Housing Act of 1937, this section focuses on the history, format, and impact of the Section 8 Rental Certificate Program and Section 8 Rental Voucher Program, especially as they are employed to promote individual housing choice and desegregation through special mobility programs.

History

In the 1930s, a shift occurred in U.S. housing policy debate, which had previously focused on the problem of substandard housing. Starting with the data collected from the 1940 census and cumulating data from successive censuses, policy makers started to argue that "inadequate income, not substandard housing, was fast becoming the core problem of the housing- disadvantaged."[164] This analysis led the federal government to sponsor new public housing policy experiments, the first of which were the Experimental Housing Allowance Program (EHAP) and the Model Cities Housing Allowance Program of 1970. EHAP, mandated by a provision in the 1970 Housing and Urban Development Act, sought to examine methods of administering direct housing assistance programs,

[161] See Ellen Lovejoy, Mount Laurel *Scorecard: Evaluation of New Jersey's Fair Share Housing System*, 58 Planning 10 (1992); Jeffrey Hoff, The Mount Laurel Myth, 6 Bus. J. N.J. 52 (1989).

[162] See *supra* note 18 at 370.

[163] Florence Roisman & Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 Clearinghouse Rev. 312, 353-354 (1990).

[164] Louis Winnick, "The Triumph of Housing Allowance Programs: How a Fundamental Policy Conflict Was Resolved," in Cityscape: Journal of Policy Development and Research 1(3): 95-121, pp. 104.

[165] The details of the EHAP experiments are discussed in Raymond Struyk and Marc Bendick (eds.), 1981. *Housing Vouchers for the Poor*. Washington, DC: The Urban Institute Press.

[166] Louis Winnick, "The Triumph of Housing Allowance Programs: How a Fundamental Policy Conflict Was Resolved," in Cityscape: *Journal of Policy Development and Research* 1(3): 95-121, pp. 110.

[167] Office of policy development and research, US Department of Housing and Urban Development, Section 8 Administrative fees: a report to congress 38, tbl. B.1 (1994). Cited in Phil Tegeler, Michael Hanley and Judith Liben, Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation, Harvard Civil Rights Civil Liberties Law Review 451 (summer, 1995).

to examine the how households react to a housing allowance, to gauge participation rates among eligible households, and to examine the impacts on the housing market of a large scale housing program.[165] The Model Cities Program of 1970 experimented with housing allowance payments in Kansas City, Missouri, and Wilmington, Delaware. Elements of these housing allowance experiments were incorporated into the Section 8 Rental Assistance Programs.

In 1974, Congress enacted the Section 8 Housing Assistance Payments program, which employed a variant of the housing allowance (tested in EHAP).[166] "Section 8" refers to Section 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 , which authorized a number of programs including tenant-based rent subsidy programs and project-based assistance programs.[167]

Project-Based Programs

Project-based programs target subsidies to particular buildings or units. Project-based programs are what is usually referred to as conventional public housing - housing which is publicly owned (by HUD or a local public housing authority (PHA)) and is rented at below-market rates to eligible low-income households. Project-based programs, also known as Housing Assistance Payments Programs, include the Moderate Rehabilitation Program and the New Construction Program. In housing market terms, the project-based programs can also be discussed as supply-side programs since they attach the low-income public housing subsidy to the housing unit, rather than the tenant, and supply low-income families with housing through the acquisition or rehabilitation of housing units.

The federal government, states, and localities have used supply-side housing programs to foster greater housing choices for low-income minority families through the promotion of the construction of affordable housing for moderate and lower income families in suburbs or in the middle-income neighborhoods of cities.[168] During the past 26 years HUD 'has explored the mobility aspects' of project-based programs.[169] However, project-based or supply-side mobility programs have not been significant in size (number of households served) or successful in implementation (some programs have faced barriers to housing acquisition) in comparison to demand-side mobility programs.[170] HUD primarily uses tenant-based programs, such as the Section 8 rental certificate and rental voucher programs, as tools for mobility for low-income households.[171]

Tenant-Based Programs

In tenant-based or demand-side programs, federal housing assistance is tied to an eligible household through a rental certificate or voucher, rather than to the housing unit. That household then uses the subsidy to pay rent on a unit found in the private housing market. The first tenant-based housing assistance program under Section 8 was the Section 8 Rental Certificate Program, started in 1974. The Voucher Program was authorized in 1983 through the Housing and Urban/Rural Recovery Act. The Section 8 Rental Certificate Program and Section 8 Rental Voucher Programs are designed to assist very low-income families - those whose incomes fall below 50% of the area median income. HUD has the authority to make exceptions for families whose income falls between 50-80% of the area median.[172] The tenant-based Section 8 Rental Certificate and Rental Voucher Programs are conventionally referred to as Section 8.

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[165] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp. 11.

[166] Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995). p. 30.

[170] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp. 11.

[171] Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995). pp.30.

[172] Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995). pp.30.

Certificates

Under the Rental Certificate Program of Section 8 of the Housing and Community Development Act of 1974, a low-income household pays 30% of income for rent and utilities, and the government pays the difference between that amount and the HUD- determined Fair Market Rent for a housing unit of the size the family qualifies for. The Fair Market Rent (FMR) is currently set equal to the 45th percentile of private-market rents for recent movers. FMRs vary by metropolitan region and sometimes by submarket.[173]

Vouchers

Section 8 vouchers differ from certificates in two ways. First, vouchers can be used anywhere in the nation, whereas certificates are valid only within a single state (or multi-state metro area). Second, whereas in the certificate program FMRs represent ceiling rents that cannot be exceeded, in the voucher program households can pay higher than FMRs if they absorb the additional costs themselves. Households can also choose to find low rent units and pay lower than FMRs and save on their rental costs.[174]

Section 8 and Race

Promoting regional housing opportunity was one of the original purposes of the Section 8 program.[175] However, during the first 13 years of the program, a tenant did not have the right to move outside the city where their certificate was issued.[176] A study of Section 8 programs concluded that, by themselves, Section 8 certificate and voucher programs, with a few exceptions, were ineffective in changing the segregation and isolation of HUD-assisted families.[177]

Although racial segregation in public housing has declined in the last 20 years, most African-American public housing residents still live in poverty-concentrated and predominantly African-American neighborhoods while white public housing residents usually live in more affluent, white neighborhoods.[178] A 1994 study commissioned by HUD which gathered demographic data on the location and racial composition of public housing nationwide found that 55 percent of all public housing family units are located in census tracts with less than 40 percent poverty. These family communities account for 47 percent of the African- Americans and 68 percent of Hispanics (as well

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[173] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). note 15, pp. 23.

[174] John Goering, Helene Stebbins, and Michael Siewert *Promoting Housing Choice in HUDs Rental Assistance Programs: A Report To Congress*. Washington, DC: United States, Department of Housing and Urban Development, Office of Policy Development and Research (1995).pp. 4.

[175] Housing and Community Development Act of 1974, Pub. L. No. 93 383, § 101(a)(1), (c)(6), 88 Stat. 633, 633 34 (codified as amended at 42 U.S.C. § 5301 (1988)). Cited in Phil Tegeler, Michael Hanley and Judith Liben, "Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation," *Harvard Civil Rights-Civil Liberties Law Review* 451 (summer, 1995). See also President's Committee on Urban Housing, A Decent Home, The Report of the President's Committee on Urban Housing. Washington, DC: US Government Printing Office (1968).

[176] US Department of HUD, Handbook 7420.7, Public Housing Agency Administrative Practices Handbook for the Section 8 Existing Housing Program, ch. 7 (1979). See also Barbara Said, The Massachusetts Experience with Targeted Tenant Based Rental Assistance for the Homeless: Lessons on Housing Policy for Socially Disfavored Groups (pts. 1 3), 1 *Geo. J. On Fighting Poverty* 16, 182, 216, at 24 n.90 (1993). Both cited in Phil Tegeler, Michael Hanley and Judith Liben, "Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation," *Harvard Civil Rights-Civil Liberties Law Review* 451 (summer, 1995).

[177] Abt Associates, Inc., (1994) "The Moving to Opportunity Demonstration: Long Term Evaluation Strategy," Bethesda, MD: Abt Associates, Inc., and (1994) "Moving to Opportunity for Fair Housing Demonstration: Data Collection Plan and Supporting Statement for OMB Clearance," Bethesda, MD: Abt Associates, Inc. Both cited in Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995). See also Jennifer L. Stucker, "Race and Residential Mobility: The effects of Housing Assistance Programs on Household Behavior," Chapter 11 in John M. Goering (ed.), *Housing Desegregation and Federal Policy*. Chapel Hill, N.C.: University of North Carolina Press (1986); Stephen D. Kennedy and Mireille L. Leger, Final Comprehensive Report of the Freestanding Housing Voucher Demonstration. Cambridge, Mass: Abt Associates, Inc. (April 1990);

[178] John Goering, Ali Kamely, and Todd Richardson, 1994. *The Location and Racial Occupancy of Public Housing in the United States*. Washington, D.C.: US Department of Housing and Urban Development."

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as 83 percent of all white households) living in public housing. In census tracts with lower levels of poverty (less than 20 percent), 25 to 37 percent of all public housing residents are African-American.[179]

A 1994 study commissioned by HUD which gathered demographic data on the location and racial composition of public housing nationwide found that 55 percent of all public housing family units are located in census tracts with less than 40 percent poverty. These family communities account for 47 percent of the African- Americans and 68 percent of Hispanics (as well as 83 percent of all white households) living in public housing.

— JOHN GOERING ET AL *The Location and Racial Occupancy of Public Housing in the United States*

Preferences and Choice

Although there are no conclusive studies of why these programs were ineffective in promoting integration, there have been several studies that have identified factors which effect subsidy holders' locational choices.[180] Some of these reflect preferences and fears of discrimination,[181] others have to do with barriers to mobility in the housing market[182] and in the conventional Section 8 certificate and voucher programs.[183] Because of disproportionate HUD allocation formulas there are drastic differences between the waiting period for a subsidy from a city Public Housing Authority (PHA) versus a suburban one. City residents can sometimes wait years longer than suburban residents for vouchers and certificates.[184]

Examples of practices that studies have identified as barriers to using rental subsidies outside a central-city resident's current community are: local residency preferences, multiple admissions requirements for different PHA Section 8 programs, discretionary administrative practices of local PHAs, a shortage of participating landlords outside of an urban area, a lack of information about suburban rental listings and suburban communities, unfamiliarity of participants with the fact that they can move from the city, transportation obstacles, and a shortage of apartments outside the city below the current Fair Market Rents (FMRs) established by HUD.[185] It has been argued that these

[179] John Goering, Ali Kamely, and Todd Richardson, 1994. *The Location and Racial Occupancy of Public Housing in the United States.* Washington, D.C.: US Department of Housing and Urban Development.

[180] Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995); Donovan, Shaun. 1993. "Moving to the Suburbs: Section 8 Mobility and Portability in Hartford," unpublished, Harvard University. (from note 31, p.25 Polikoff. Among Donovan's findings was that of the nearly 900 families on the waiting list for the suburb of West Hartford, only 120 resided in West Hartford. The rest were nearly all black and Latino households living in the central city of Hartford.); Robert Lake, 1981. "Housing Search and Discrimination." in his *The New Suburbanites: Race and Housing in the Suburbs.* New Brunswick, New Jersey: Center for Urban Policy Research; Susan Popkin, James Rosenbaum, and Patricia Meaden. 1993. "Labor Market Experiences of Low Income Black Women in Middle Class Suburbs: Evidence from a Survey of Gautreaux Program Participants," *Journal of Policy Analysis and Management* 12(3): 556 573; Kathryn Nelson and John Edwards, 1993. "Intra Urban Mobility and Location Choice in the 1980s," in G. Thomas Kingsley and Margery Austin Turner (eds.), *Housing Markets and Residential Mobility.* Washington DC: The Urban Institute Press.

[181] Meryl Finkel and Stephen Kennedy. 1992. "Racial /Ethnic Differences in Utilization of Section 8 Existing Rental Vouchers and Certificates," Housing Policy Debate 3(2): 463 508; Meryl Finkel and Stephen Kennedy. 1994. Section 8 Rental Voucher and Rental Certificate Utilization Study: Final Report. Cambridge, Mass,: Abt Associates, Inc.; Reynolds Farley. 1993. "Neighborhood Preferences and Aspirations Among Blacks and Whites" in G. Thomas Kingsley and Margery Austin Turner (eds.), *Housing Markets and Residential Mobility.* Washington DC: The Urban Institute Press.

[182] Advisory Commission on Regulatory Barriers to Affordable Housing. 1991. "Not in My Backyard": Removing Barriers to Affordable Housing. Washington, DC: US Department of Housing and Urban Development. Margery A. Turner, Raymond J. Struyk, and John Yinger. 1991. Housing Discrimination Study: Synthesis. Washington, DC: U.S. Department of Housing and Urban Development.

[183] Phil Tegeler, Michael Hanley and Judith Liben, Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation, Harvard Civil Rights Civil Liberties Law Review 451 (summer, 1995); William Apgar and Christopher Herbert, Fair Access to Housing Assistance Resources: An Examination of the Allocation Process for Section 8 Vouchers and Certificates (Harvard University, Joint Center for Housing Studies, working paper W94 2), cited in Phil Tegeler, Michael Hanley, and Judith Liben, 1995. "Transforming Section 8 Into A Regional Housing Mobility Program," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?.* Washington, DC: The Urban 2 Institute (1995). pp. 128 n.8.

[184] See e.g., Comer v. Cisneros, 37 F 3d at 784 (2d Cir. 1994). Cited in Phil Tegeler, Michael Hanley and Judith Liben, "Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation," *Harvard Civil Rights-Civil Liberties Law Review* 451 (summer, 1995).

[185] Phil Tegeler, Michael Hanley and Judith Liben, Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation, *Harvard Civil Rights Civil Liberties Law Review* 451 (Summer, 1995). *467. William Apgar and Christopher Herbert, Fair Access to Housing Assistance Resources: An Examination of the Allocation Process for Section 8 Vouchers and Certificates (Harvard University, Joint Center for Housing Studies, working paper W94 2), cited in Tegeler in Polikoff, p. 128 n.8); Florence Roisman and Phil Tegeler, "Improving and Expanding Housing Opportunities for Poor People of Color," 24 Clearinghouse Review 312 (1990).

are barriers to housing choice which prevent the Section 8 Rental Certificate and Voucher Programs from having a significant national impact on residential segregation.[186] Regarding differences in Section 8 voucher and certificate utilization across racial and ethnic categories, the Housing Voucher Demonstration sponsored by HUD found that the proportion of enrolled households that actually lease a unit with the Section 8 subsidy varies with race and ethnicity of the household. The demonstration found that black and Hispanic success rates were significantly lower than the success rate of non-minority white enrollees in both the Certificate and Voucher Programs.[187] Thus a lower proportion of black and Hispanic enrollees than non-minority white enrollees obtain housing that meets the Section 8 program requirements from a landlord willing to comply with program conditions.

Special Mobility Programs

In the 1970s, HUD, with the cooperation of over 100 PHAs in 17 different metropolitan areas, started experimenting with programs that helped households move across PHA-jurisdictional lines.[188] These types of programs, which provide additional assistance to families looking to make a move to areas that are less poverty-concentrated and segregated, have continued and multiplied since the 1970s with the assistance of HUD and are commonly referred to as mobility or special mobility programs (hereafter both are referred to as special mobility programs).

What Is Mobility?

In the literature concerned with low-income public housing, "mobility" refers to the moving of poor households into neighborhoods containing largely middle income households from poverty areas, most frequently found in the inner city.[189] There are at least four related goals that most special mobility programs share:[190]

1. racial desegregation
2. movement from the central city to suburbs
3. housing mobility as an increased ability to make a freer and more informed housing choice
4. combating reverse mobility - maintaining affordable housing stock in non-concentrated areas to prevent poor residents in mixed income areas from being displaced

Special mobility programs consist of a varied set of local PHA initiatives that use Section 8 certificates and vouchers (as the common feature around which they design programs) to foster the goal of moving households receiving Section 8 assistance in concentrated areas to areas of low concentration. Special mobility programs were designed to pro-actively promote integration through increased portability of certificates and vouchers.

Special mobility programs are a subset of the conventional Section 8 Rental Certificate and Section 8 Rental Voucher Programs. Mobility and special-mobility programs differ from the standard or routine operation of HUD's Section 8 Rental Certificate and Voucher Programs in that they

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[186] Tegeler et al discuss in depth policy changes to increase the portability of Section 8. Phil Tegeler, Michael Hanley and Judith Liben, "Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation," *Harvard Civil Rights-Civil Liberties Law Review* 451 (summer, 1995).

[187] Abt Associates, Washington, DC. HUD Contract HC 5716.

[188] First among these was the Gautreaux Program (see Gautreaux subheading in text). Its Assisted Housing Program (with special mobility features) was established in 1976. See *Gautreaux v. Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969; Hills v. Gautreaux, 425 U.S. 284 (1976); *Gautreaux v. Landrieu*, 523 F. Supp. 665 (N.D. Ill. 1981); Mary Davis, "The Gautreaux Assisted Housing Program," in G. Thomas Kingsley and Margery Austin Turner (eds.), *Housing Markets and Residential Mobility*. Washington, DC: The Urban Institute Press (1993). In 1979, HUD ran its first interjurisdictional mobility experiment, the Regional Housing Mobility Program. See Mary E. Brooks et al., *A Study of Interjurisdictional Housing Mobility Programs*. New York, NY: Metropolitan Action Institute (1982).

[189] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995). pp. 8.

[190] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).

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provide assistance to families interested in moving to areas that are less segregated.[191] Special mobility programs are often established as result of a federal court order, consent decree, or administrative finding of non-compliance with fair housing regulations to promote racially diverse housing choices.[192] The exceptions to this are HUD demonstration programs such as the 1979 Regional Housing Mobility Program experiment and the 1994 Moving To Opportunity demonstration program.[193] Each special mobility housing program augments the standard Section 8 rental assistance program with its own combination of services, such as: housing search counseling, tenant screening, landlord outreach, post-placement follow-up services, reduced portability barriers with neighboring housing authorities, subsidized housing vacancy listings, community networking, and paid moving expenses.

The stated intention and use of special mobility programs has not been to disperse entire inner-city low-income communities.[194] The intent of housing mobility strategies is to give low-income families the ability to live in neighborhoods which reflect the overall racial and economic diversity of the metropolitan area and which are not disproportionately poor and segregated.[195] Thus, the eventual goal of housing mobility strategies are racially and economically integrated communities. Many housing mobility advocates acknowledge that the "values of opportunity, desegregation, and choice must also be balanced against the importance of equalizing housing and neighborhood conditions in segregated low-income neighborhoods." "The 'right' to move should include the right to remain in place."[196]

Scope and Scale

Special mobility programs that utilize the Section 8 Program have been implemented at too small a scale or for too short a time-period to have had a significant impact on poverty and racial concentration on the national level. Between 1969 (the date of the Gautreaux decision, the first

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[191] John Goering, Helene Stebbins, and Micheal Siewert *Promoting Housing Choice in HUDs Rental Assistance Programs: A Report To Congress.* Washington, DC: United States, Department of Housing and Urban Development, Office of Policy Development and Research (1995). pp. 43.

[192] John Goering, Helene Stebbins, and Micheal Siewert *Promoting Housing Choice in HUDs Rental Assistance Programs: A Report To Congress.* Washington, DC: United States, Department of Housing and Urban Development, Office of Policy Development and Research (1995). pp. 43. and George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?.* Washington, DC: The Urban Institute (1995). pp. 25.

[193] Moving To Opportunity (MTO) sought to further study the feasibility and impacts of special mobility efforts. However, MTO program budget appropriations were curtailed by Congress. John Yinger. Closed Doors, Opportunities Lost: *The Continuing Costs of Housing Discrimination,* New York: Russell Sage Foundation, 1995. pp. 235.

[194] The Section 8 program of 1974 is not a product of what is known in urban planning and housing policy circles as urban renewal the series of urban renewal programs starting with the Housing Act of 1949, the amending act of 1954. The concept behind the Act was that federal money could be applied to renewing outworn parts of cities, but principally residential parts. Despite the intent, the outcome of urban renewal was the destruction of a significant portion of low cost housing as well as entire communities in U.S. cities. By the mid 1960s public opposition and criticism of urban renewal had made the federal urban renewal programs untenable. Urban renewal sought to renew the city through the demolition and reconstruction of the built environment. See Peter Hall, 1988. Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century. Cambridge, Mass.: Blackwell Publishers.

[195] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995). pp. 11

[196] Phil Tegeler, Michael Hanley and Judith Liben, "Transforming Section 8: Using Federal Housing Subsidies to Promote Individual Housing Choice and Desegregation," *Harvard Civil Rights-Civil Liberties Law Review* 451 (Summer, 1995)*461. Articles which discuss the tension between housing mobility efforts and revitalization efforts of low income communities include John O. Calmore, Spatial Equality and the Kerner Commission Report: A Back to the Future Essay, 71 N.C. L. REV. 1487 (1993); Paul Davidoff, Decent Housing for All: *An Agenda in America's Housing Crisis: What Is to Be Done?* 186 (Chester Hartman ed., 1983). It is worth noting that Section 8 vouchers are also being used in place based initiatives by Community Development Corporations who are rehabilitating their old housing stock. CDCs have used the voucher to prevent the displacement of low income residents unable to pay the increased rents that accompany rehabilitation. Winnick, p. 115. Apparently, his source on the use of vouchers in CDC programs is Greg Tyson of LISC. The Section 8 program Winnick refers to is the Section 8 Existing (portable vouchers) Program.

court-mandated special- mobility program) and 1994, fewer than 12,000 low-income minority households have moved to new locations under all of the tenant-based special mobility programs.[197] This number is quite small in light of estimates that in 1990 there were 5.9 million black residents living urban census tracts where the black poverty rate was at least 40 percent.[198] In addition to this estimate is the number of Latino and Asian-American households living in concentrated-poverty urban census tracts.

The number of low-income minority households that have moved to new locations under all of the tenant-based special mobility programs is also small in comparison to the number of households currently receiving tenant-based rental assistance through the Section 8 Rental Certificate and Voucher programs. Compared to the total of 12,000 households assisted through special mobility programs, in 1994 approximately 1 million households received assistance through HUD's Section 8 Housing Certificate Program, and another 294,000 households were assisted through the Housing Voucher Program.[199] In 1992 the federal government funded slightly less than 1.5 million Section 8 vouchers and certificates.[200] In 1993 HUD had funding for approximately 1,454,000 households through either certificates or vouchers and over 2.6 million households.

Current Special-Mobility Programs

As of 1994, major HUD special mobility programs were active in: Chicago, Boston, Memphis, Cincinnati, Hartford, Las Vegas, Dallas, and Yonkers[201] A review of housing mobility programs estimated that as of 1994 these programs had assisted 11,000 families in making mobility moves.[202] This number is in comparison to the 1.294 million certificates and vouchers used by families in 1994. Recent and unstudied mobility efforts are under way in Milwaukee, and eastern Texas. Parma, Ohio (Cleveland metro area) and Omaha, Nebraska also have special-mobility programs.[203] In addition, three large special mobility programs were initiated in 1994-5, though it is too early to observe results. They are as follows:

Buffalo

As the result of litigation in *Comer v. Cisneros*, funding has been reserved for 800 special mobility certificates to be used for a housing mobility program in the Buffalo metropolitan area, contingent on final settlement negotiations.[204] Suburban residency preferences, which had the effect of excluding central-city households from access to suburban housing, were eliminated.

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[197] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995). pp.25.

[198] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995). pp.11, citing Paul Jargowsky, "Ghetto Poverty among Blacks in the 1980s," Journal of Policy Analysis and Management 13(2) (Spring 1994): 288 310.

[199] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995). See also John Goering, Ali Kamely, and Todd Richardson. 1994. *The Location and Racial Occupancy of Public Housing in the United States.* Washington, D.C.: US Department of Housing and Urban Development. (on order).

[200] Institute for Policy Studies, *Poverty Deconcentration as a Policy Strategy* (Occasional Paper No. 17, Johns Hopkins University, 1995). pp. 30. It is highly probable that all of these certificates and vouchers were allocated to PHAs nationwide, since demand exceeds supply for these subsidies.

[201] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).

[202] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).

[203] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).note #17, pp. 23.

[204] *Comer v. Cisneros* (37 F.3d 775, 2d. Cir. 1994).

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Allegheny County
As the result of litigation in *Sanders, et al. v. HUD* in Allegheny County, Pennsylvania (Pittsburgh metropolitan area), a consent decree was negotiated which provides that all newly constructed public housing must be scattered-site housing placed in areas traditionally not open to low-income racial minorities; that obsolete public-housing developments will be demolished and replaced by housing in non-impacted areas; and that 450 special mobility Section 8 certificates will be provided to members of the plaintiff class.

Minneapolis
In one of the largest settlements, HUD has agreed to raze 770 concentrated public housing units in Minneapolis and replace them with scattered-site new construction as well as 900 new Section 8 mobility certificates supported by funding for mobility counseling."[204]

Dallas
The Dallas Housing Opportunity Program was mandated by a 1987 consent decree following the court's finding that the Dallas Housing Authority (DHA), HUD, and the City of Dallas had established and perpetuated racial segregation in the West Dallas housing projects and elsewhere. Under the consent decree, DHA was required to have 50 percent of households located in non-impacted areas (census tracts containing less than 10 Section 8 families as defined in this case) and was allocated an additional 1,435 certificates.[208] A 1988 household survey of 120 families moving from the West Dallas Housing Project under the Dallas special mobility program reported high levels of family satisfaction; 89 percent of heads of family reported a better environment for themselves and their children.[209]

Hartford
Hartford's mobility program has no requirements about the racial mix or Section 8 concentration of neighborhoods. There is no special allocation of Section 8 certificates to the program. The Hartford mobility program is a negotiated agreement, reached in 1990 under threat of litigation, but not part of a court order or consent decree. The purpose of the program is to provide all Section certificate holders with information and support services in making a housing choice.[210] Under Hartford's voluntary program, between 1990 and 1994 the share of Hartford Section 8 Households located in suburbs has increased from one to fifteen percent of the total number of Hartford certificate-holding households.[211]

The evaluations of the Hartford, Dallas, and Alameda County[206] Section 8 programs suggest that the provision of detailed information about rental housing outside of low-income and racially concentrated areas and assistance in obtaining such housing stimulates moves to mixed-income neighborhoods.[207]

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[204] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995.

[206] This refers to a portability study of certificate holders in the Alameda County area by the Housing Authority of Alameda County, California. Ophelia Basgal and Joseph Villareal, "Preliminary Review of Portability in Alameda County, California," Housing Authority of Alameda County, 1994. This was a study of Section 8 certificate locational usage. The HAAC's Section 8 certificates are not administered through a special mobility program.

[207] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp. 17. Other studies which identify mobility programs: Roisman, Florence Wagman and Hilary Botein (1993). "Housing and Life Opportunities," Clearinghouse Review 27(4): 335-351.

[208] There were three separate cases labeled Walker I, Walker II, Walker III. Walker I (734 F. Supp. 1231 App. A N.D. Tex. 1989); Walker II (734 F. Supp. 1272, partially reversed on appeal); Walker III (734 F. Supp. 1289).

[209] William Stacey, Dennis Wayne Brown, Ray Coder, Evaluation of the Satisfaction Level of Residents Relocated from the West Dallas Housing Project to the Private Rental Section (report prepared for the Dallas Housing Authority, February 1988). To date no surveys have been conducted to determine the long range impacts of moves on households.

[210] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?* Washington, DC: The Urban Institute (1995).

Impacts and Effects of Special Mobility Programs

Because most programs have a legal mandate to locate subsidy holders in areas of non-concentration of racial minorities and poverty, they have been able to relocate most of those households participating in special mobility programs. Not enough is yet known about the critical outcomes of these programs. The long term effects, the feasibility of implementing special mobility programs as a large percentage of housing assistance programs, and the relative importance of factors that have made existing special mobility programs successful have not yet been assessed. The bulk of the available data on these Section 8 mobility programs concerns their effects on African Americans, with little information about their assistance to income-eligible Hispanic or Asian-American families.[212]

Gautreaux

The Gautreaux Assisted Housing Program was the result of litigation and a court finding that the Chicago Housing Authority had deliberately located public housing to perpetuate and intensify racial segregation and that HUD was also liable through its funding and oversight functions.[213]

The Gautreaux Assisted Housing Program in the Chicago metropolitan areas is the oldest of the special mobility efforts, it has generated the most research, and yields the only comprehensive analysis of the effects of housing mobility of any program. Among the research findings, Rosenbaum et al., found that children who had grown up in the suburbs were found to be far more likely to have completed high school, far more likely to attend college, and far more likely to be employed, and employed at higher wages. These suburban youths reported significantly greater interracial experience, both of a favorable and unfavorable kind.[214]

The findings from the research on Gautreaux indicate that improvements in economic outcomes for parents and educational outcomes for children are associated with enhanced opportunities in neighborhoods less severely impacted by poverty.[215] James Rosenbaum and his colleagues conducted a series of surveys of 332 Gautreaux families. Households that moved within Chicago were compared to households that moved to the suburbs. Analysis found that mothers who moved to the suburbs were significantly more likely to be employed than mothers who moved with their families within the city. However, wages of the two groups were similar. Employment rates declined from

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[211] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp.49.

[212] John Goering, Helene Stebbins, and Micheal Siewert *Promoting Housing Choice in HUDs Rental Assistance Programs: A Report To Congress*. Washington, DC: United States, Department of Housing and Urban Development, Office of Policy Development and Research (1995). note 16, pp.43

[213] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp. 28.

[214] James Rosenbaum, Nancy Fishman, Alison Brett, and Patricia Meaden, "Can the Kerner Commission's Housing Strategy Improve Employment, Education, and Social Integration for Low Income Blacks?" *North Carolina Law Review* (Special Issue: Symposium: The Urban Crisis: The Kerner Commission Report Revisited) 71(5) (June 1993), pp.1519 72; James E. Rosenbaum, Marilyn J. Kulieke, and Leonard S. Rubinowitz, "White Suburban Schools' Responses to Low Income Black Children: sources of Success and Problems," The Urban Review 20(1) (1988), pp.28 41; Julie Kaufman and James Rosenbaum, " The Education and Employment of Low Income Black Youth in White Suburbs, " Educational Evaluation and Policy Analysis 14(3) (Fall 1992), pp.229 40.

[215] James Rosenbaum and Susan J. Popkin," Employment and earnings of low income blacks who move to middle class suburbs," in Christopher Jencks and Paul E. Peterson (eds.), *The Urban Underclass*, (Brookings Institution, 1991). James Rosenbaum, "Changing the Geography of Opportunity by Expanding Residential Choice: Lessons from the Gautreaux Program," *Housing Policy Debate* (1995), 6(1). Cited in George Peterman and Kale Williams,– 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).

pre-move to post-move in both groups, which the authors attributed to overall labor market conditions during the period of the study.[216]

Cincinnati

In addition to the Gautreaux studies, there have also been more modest surveys of families in Cincinnati's Special Mobility Program. The study's results are ambiguous in linking housing mobility to children's school quality and employment chances.[217] In addition to the short-term nature of the study, a city-wide school desegregation and voluntary busing program as well as a successful alternative school program had weakened the link between neighborhood and school quality in Cincinnati.[218]

4. *Elimination of Exclusionary Regulations and Inclusionary Policies*

One municipal approach to integration has been the effort to amend housing policies to embrace affirmative, pro-integrative policies and programs. These approaches include promoting ordinances which enforce housing codes and monitor realtors to prevent discriminatory practices.

The historical role of zoning and other regulatory land use practices in U.S. housing discrimination starts with racial zoning. Racial zoning - ordinances which explicitly prohibited the entry of blacks or other minority groups into white-zoned neighborhoods - was abolished by the U.S. Supreme Court in the 1917 *Buchanan v. Warley*[219] decision. Subsequent to that decision the intent and effect of racial zoning to exclude minority residents from white neighborhoods was perpetuated by the real estate practice of race-restrictive covenants, which were restrictions on deeds or agreements among the property owners in a given area to prevent sales to minority households. These covenants were widespread until 1948 when the U.S. Supreme Court ruled in *Shelly v. Kraemer*[220] that it was unconstitutional for any government to enforce a racial restrictive covenant.[221] Exclusionary zoning and regulatory land use practices were not explicitly covered in the Fair Housing Act of 1968.[222] The role of exclusionary zoning in housing discrimination has changed from explicit and intentional racial exclusion to de facto exclusion of low-income and especially low-income minority residents through a lack of affordable housing opportunities.[223] This exclusionary effect was recognized in the Mount Laurel decisions (see Fair Share Section).

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[216] James Rosenbaum and Susan Popkin, "Employment and Earnings of Low Income Blacks Who Move to Middle Class Suburbs," in Christopher Jencks and Paul Peterson (eds.) The Urban Underclass. Washington, DC: The Brookings Institution (1991); Susan Popkin, James Rosenbaum, and Patricia Meaden, "Labor Market Experiences of Low Income Black Women in Middle Class Suburbs: Evidence from a Survey of Gautreaux Program Participants," Journal of Policy Analysis and Management 12(3) (Summer 1993), p.562. James Rosenbaum, "Closing the Gap: Does Residential Integration Improve the Employment and Education of Low Income Blacks?", in Lawrence Joseph (ed.), Affordable Housing and Public Policy: Strategies for Metropolitan Change. Chicago, Ill: Center for Urban Research and Policy Studies (1993).

[217] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995).

[218] Paul Fischer. 1991. "Is Housing Mobility an Effective Anti "Poverty Strategy?: An Examination of the Cincinnati Experience." A Report to the Stephen A. Wilder Foundation. Cincinnati, Ohio. Cited in George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp.13.

[219] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. p. 187.

[220] For more information on the Shelly decision as well as the history and role race restrictive covenants see Clement E. Vose, 1959. *Caucasians Only*. Berkeley: University of California Press.

[221] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. p. 187.

[222] John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. pp. 190.

[223] Barbara Lukermann and Michael P. Kane. 1994. Land Use Practices: Exclusionary Zoning, de facto or dejure?, Minneapolis: CURA. For further discussion see Norman Williams, Exclusionary Land Use Controls: The Case of Northeastern New Jersey, 22, Syracuse Law Review 474, 478. 1971; Barbara Rolleston (1987), "Determinants of Restrictive Suburban Zoning: An Empirical Analysis," Journal of Urban Economics 21: 1-21.

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What Is Exclusionary Zoning?

Exclusionary practices include land use planning practices and regulatory requirements, usually in suburban metro areas, which limit housing choices for moderate and low income households. While such land use and regulatory practices may not be discriminatory in intention, in effect they close housing and land markets to low-and moderate-income families. Exclusionary zoning occurs when and where municipalities increase the required standards of housing quality beyond those necessary for health and safety and thereby exclude the realistic opportunity for low- and moderate income housing to be maintained or developed.[224]

Examples of exclusionary zoning regulations which have the discriminatory effect of excluding the urban minority and non-minority poor are: restrictions that specify the minimum square footage for new homes and lots; prohibitions on multi-family housing units; establishing maximum densities; two car garage requirements; and fees associated with the cost of development and service connection charges. These types of regulations make it nearly impossible for poor families to find suitable and affordable housing. The areas with such regulations are often middle-class, predominantly white communities. Often these areas also have the best public schools, and provide easy access to shopping, health care, and employment opportunities.

Mount Laurel

The Mount Laurel decisions banned exclusionary zoning in order to facilitate the creation of affordable housing units. It also set the precedent for fair share policies. Mount Laurel is the largest and longest effort and yields the most comprehensive study of the process of implementing fair share goals in the private housing market. The decision effects all the of the state of New Jersey's municipalities. These municipalities have been slow in meeting their 'fair share' goals as specified by Mount Laurel due in part to a housing development recession and because of legal disputes among city planners, builders, and housing advocates over requirements passed by the state legislature.[225]

Since the Mount Laurel decisions, litigation involving the accusation of exclusionary zoning has been rare (check this statement). More common are state and municipal proactive efforts to create inclusionary housing programs (and thus more affordable housing) through land use planning requirements. Efforts like these which seek to increase the opportunity for affordable housing and do not contain any necessary component to facilitate racial integration are known under the rubric of 'fair share housing'.

Inclusionary Housing Programs

Inclusionary programs, such as inclusionary zoning ordinances - which have been adopted by 50 counties nationwide - typically have a duel focus: they are intended to combat exclusionary zoning restrictions, and to mandate or induce developers of new housing to set aside a portion of new units at below-market rates. Many municipalities have made additional efforts to change municipal housing policies to embrace affirmative, racially and economically integrative policies and programs which support integrative incentives, and civic promotion and through regulatory ordinances which monitor realtors and enforce housing codes.

Montgomery County, Maryland's Inclusionary Zoning and Subsidized Housing Supply program is a leading example of voluntary affordable housing supply in an upper-middle-class suburb. Since 1974, Montgomery County as required that all new residential developments of 50 or more units include a percentage (currently 15%) of moderately priced dwelling units. This ordinance is similar to Massachusetts' Anti-Snob Law (see Fair Housing section), however in many cases that law has to be enforced by the state on an unwilling municipality. In the Montgomery County case the local

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[224] Barbara Lukermann and Michael P. Kane. 1994. Land Use Practices: Exclusionary Zoning, de facto or dejure?, Minneapolis: CURA.

[225] Ellen Lovejoy, "Mount Laurel Scorecard," in *Planning*, May 1992. pp.11. Among the disputed issues were a town's fair share quota, housing unit density levels, and builders' remedy agreements (which allow builder's t construct a certain number of market priced units for each affordable unit required by Mount Laurel).

government is supportive of the ordinance. Despite this proactive stance, less than 0.4 percent of the county's privately produced housing units are operated to be affordable to the very poor.[226]

Affirmative Housing

Efforts by pro-integrative communities, such as Shaker Heights of Cleveland, not only restrict exclusionary zoning but also pursue pro-integrative strategies as part of municipal policy. Affirmative housing efforts often combine the goals of fair housing strategies (anti-discriminatory) and fair share housing strategies (affordable housing for moderate- and low- income groups).

A study of Oak Park, a suburb of Chicago, and that community's pro-integrative policies concludes that active pursuit of integration by local government makes all the difference.[227] Action is often taken on a variety of fronts. Affirmative housing programs employ a range of the following: race-conscious housing counseling; affirmative marketing by real estate brokers; collection and dissemination of racial or ethnic information about neighborhoods by a housing center; requiring or encouraging notification, to a housing center, of the intent to sell one's home; programs to maintain housing quality in changing neighborhoods; programs to maintain or improve public service quality in changing neighborhoods; programs to combat housing discrimination, especially steering; anti-blockbusting ordinances, such as solicitation bans or the prohibition of for- sale signs; low-interest loans for households who move into neighborhoods where their group is underrepresented; home equity insurance.[228]

Both the Shaker Heights and the Oak Park integration efforts of the 1960s and 1970s were initially started by neighborhood residents as surrounding areas were undergoing racial transition from predominantly white to black neighborhoods. Residents wanted to maintain a stable and integrated neighborhood and preserve housing values. These communities avoided stigmatizing both their minority and low-income residents and the reputation of the neighborhood through affirmative housing policies such as fostering cooperation between the city, realtors, lenders, landlords and home-sellers to end discriminatory practices.[229]

Oak Park has enlisted most of the aforementioned strategies in its integration maintenance efforts, including public services monitoring and an equity insurance program. Oak Park has been stable for many years. It was 11 percent Black in 1980 and 18 percent Black in 1990. However, the white population has declined precipitously, by 24 percent between 1970 and 1980 and by 33 percent between 1980 and 1990.

Starrett City

Starrett City, a large privately-owned, publicly - subsidized, middle-income rental housing project in Brooklyn, New York, opened in 1974. When no whites applied to the housing development after it opened, Starrett City adopted a strategy to attract whites and maintain racial integration.[230] Starrett City adopted multiple elements in its integration strategy. However, the most controversial element was a ceiling quota imposed on the number of minority residents, which was originally capped at 30%. In 1979 five black applicants sued Starrett City for discriminating through its quota.

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[226] George Peterman and Kale Williams, 1995. "Housing Mobility: What Has It Accomplished and What is Its Promise?," in Alexander Polikoff (ed.), *Housing Mobility: Promise or Illusion?*. Washington, DC: The Urban Institute (1995). pp.74. Further references: Monica Shah, "An Explanation and Examination of the Moderately Priced Dwelling Unit Program in Montgomery County, Maryland," paper presented for Housing Law Seminar, Georgetown University Law Center (July 1993).

[227] C. Goodwin, *The Oak Park Strategy: Community Control of Racial Change*, (Chicago: University of Chicago Press, 1979)

[228] Alexander Polikoff. 1986. "Sustainable Integration or Inevitable Resegregation: The Troubling Questions." In Housing Desegregation and Federal Policy, edited by John Goering. Chapel Hill: The University of North Carolina Press, pp. 43 71, cited in John Yinger; and John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. pp.124 6.

[229] W. Dennis Keating. 1994. *The Suburban Racial Dilemma: Housing and Neighborhoods*. Philadelphia: Temple University Press. Donald L. DeMarco and George Galster, "Prointegrative Policy: Theory and Practice", *Journal of Urban Affairs*, 15:2(1993).

[230] John Yinger; and John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, New York: Russell Sage Foundation, 1995. pp. 130-131.

The state of New York was also named as a defendant. In 1988, after years of litigation, the U.S. Supreme Court struck down the illegal quota used at Starrett City.[231] Following the Supreme Court decision, Starrett City dropped its ceiling quotas but retained their policy of maintaining racial integration.[232] By 1990, the percentage of white residents had declined. However, the population remained diverse, with 50 percent white residents, 26 percent black residents, 16 percent Hispanic residents, and 8 percent Asian American residents.[233]

5. *Redlining and the Community Reinvestment Act*

The problem of redlining was created and nearly institutionalized by the practices of the Home Owners Loan Corporation (HOLC), a federal agency established in 1933 to make home ownerships widely available to the public. The HOLC provided funds for refinancing urban mortgages in danger of default and granted low-interest loans to former owner who had lost their homes to foreclosure to enable them to regain their properties. The HOLC systematically undervalued racially or ethnically diverse central city neighborhoods, which they deemed to be risky areas for investment. Federal authorities consequently induced the channeling of mortgage funds away from central city communities of color and almost exclusively toward white, outlying neighborhoods.[234] The redlining of the HOLC had the effect during the 40's and 50's of steering the Federal Housing Authority and Veteran's Administration mortgages towards white suburbs rather than communities of color in central cities.[235]

Enacted in 1977 to motivate certain financial institutions to meet community credit needs, the Community Reinvestment Act's text states that its purpose is to require federal financial supervisory agencies to use their authority to encourage regulated institutions to help meet the credit needs of the local communities...consistent with the safe and sound operation of such institutions. A regulated institution's supervisory agency is to assess that institution's record of meeting the credit needs of its entire community, including low-and moderate income neighborhoods, consistent with the safe and sound operation of such institutions. The CRA is just one of three federal banking statutes enacted to address the practice of the financial services industry of individual discrimination and geographic redlining, as well as perpetuating a situation of community disinvestment all of which systematically undermine the ability of persons to obtain credit on equal terms. The CRA, the Equal Credit Opportunity Act, (ECOA) and the Home Mortgage Disclosure Act (HMDA) were each directed at creating a more level playing field in the market for credit. Discrimination in the residential real estate finance market has been prohibited under the Fair Housing Act since 1968, but it was not until the enactment of the Equal Credit Opportunity Act in 1974 that Congress addressed the issue of discrimination in lending.

The ECOA originally prohibited creditors from considering gender-related factors in assessing whether to grant credit, amendments prohibiting discrimination on the basis of race, color, religion, national origin, age, receipt of public assistance benefits, or the exercise of right under the Consumer Credit Protection Act were enacted in 1976. Date collected under the HMDA, which uses disclosure to address the problem of discrimination in lending, indicates that many minorities today have a statistically higher chance of have their home mortgage denied than do similarly situated whites.[236] The ECOA and the HMDA only tangentially bear upon the related practices of geographic redlining and community disinvestment.

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[231] John Yinger; and John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*,, New York: Russell Sage Foundation, 1995. pp. 130-131.

[232] John Yinger; and John Yinger. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*,, New York: Russell Sage Foundation, 1995. pp. 130-131.

[233] U.S. Bureau of the Census. 1992. Population and Housing Characteristics for Census Tracts and Block Numbering Areas, New York, NY PMSA,. 1990 Census of Population and Housing Report CPH-3 245H. Washington, DC: U.S. Government Printing Office. Table 8, census tract 1058.

[234] Massey & Denton, at 51-52.

[235] Id., at 53-54.

[236] A. Brooke Overby, The Community Reinvestment Act Reconsidered, 143 U. Pa. L. Rev. 1431, 1449 (1995).

Redlining occurs when an institution fails to reinvest in its own community on unfounded perceptions about the credit risk of borrowers in low-income areas served by the institution (unrelated to the borrower's ability or willingness to pay or the value of the collateral). The CRA was intended to begin to remedy years of redlining. Opinions on the CRA break down into two camps, those who see the CRA as a crucial step towards solving the problems of inadequate housing and urban decay, and who see the lax efforts of regulators to enforce the CRA as undercutting the materialization of this goal; and those who see the CRA as aggressive and heavy handed government intervention that forces suboptimal lending patterns making the CRA anachronistic, and self-defeating.[237]

Amendments to the Act in 1989 require the agency to rate institutions' performance's using one of four possible grades and require public disclosure of the public section of the institution's CRA report. In 1991 the Act was amended to included a reference to race and gender. It provides that when evaluating an institution's performance in meeting community credit needs, consideration should be given to any loss or contribution incurred when an institutions donate, sells on favorable terms, or makes available on a rent-free basis a branch located in a predominantly minority neighborhood to a minority depository institution or a women's depository institutions. In 1992 the agencies were instructed to consider in the CRA evaluation process majority owned institutions capital investment, loan participation, and other cooperative ventures with minority-owned and female-owned financial institutions and low-income credit unions.[238]

In an effort to put more teeth into the CRA in July, 1993 President Clinton instructed financial institution regulators to develop new regulations to enforce the CRA. The proposed amendments attempted to respond to industry complaints that the existing enforcement regime provided ambiguous performance standards and excessive paperwork, as well as to activists and politicians concerns that the existing CRA regime "overemphasized process and underemphasized performance."[239] The amendments set forth quantifiable performance criteria to be used in assessing whether an institution was meeting community credit needs and established an evaluating system that sought to reward results in community lending over an institution's efforts to meet credit needs. Under the new criteria, an institution would have to demonstrate that its efforts produced quantifiable results — loans actually made to communities. Final enforcement regulations were approved in April of 1995 after an extended comment period. Under the new performance standards for large, retail institutions, three tests are conducted to generate raw ratings that are then used to compute an institution's composite CRA rating: the Lending Test, the Investment Test, and the Service Test.[240]

The Lending Test looks at an institution's performance in meeting community credit needs and is evaluated by measuring the institution's home mortgage lending, small business and small farm lending, community development lending, and, if consumer lending constitutes a substantial majority of the institution's business, consumer lending. The rating on the Lending Test hinges on the institution's responsiveness to the credit needs of its assessment area, the degree of lending in its assessment area, the geographic distribution of loans throughout its assessment area and among individuals of different income levels and businesses, its record in meeting the credit needs of highly economically disadvantaged areas of its assessment area, of low-income individuals, or of businesses, its use of innovative or flexible lending practices in a safe and sound manner to meet the needs of low-or moderate-income individuals and geographies, and its leadership position in community development lending.[241]

The Investment Test depending on the amount of "qualified investments" made by the institution, the innovativeness and complexity of the institution's investments, and its responsiveness to

[237] Id., at 1451.
[238] Id., at 1433.
[239] Id., at 1432.
[240] Id., at 1469-1475.
[241] Id., at 1471.B

community credit and community development needs.[242] The Service Test evaluates the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services. The evaluator assesses the institution's distribution of branches among the geographies it serves, its record of opening and closing branches, the extent to which it makes available alternative systems for delivering banking services to low-and moderate-income geographies and individuals, and the range of the services offered. In addition, consideration is given to the extent, innovativeness, and responsiveness of the institution's community development services.[243]

The three tests are used to determine the institution's composite CRA rating with the greatest weight given to the institution's performance under the Lending Test. Unfortunately the exact effect on an institution of evidence of discrimination or illegal credit practices is left vague and the regulations are not specific as to how an institution's ratings will factor into the application process to a given agency. If an institution receives an overall rating of substantial noncompliance it was proposed that the Justice Department subject the institution to enforcement proceedings but those proposals did not make the final 1995 version of the CRA. Also dropped late in the revisions of the CRA was a proposal to create a three strikes and you're out rule under which an institution which received a needs to improve for two consecutive examinations would have received a substantial noncompliance rating if its next evaluation also resulted in a needs to improve. The ratings, good, adequate, reasonable, and poor, are quite broad and the evaluation is still too subjection according to many major lending institutions. Countering the lending institutions concern is the awareness of activists and CRA advocates that though the CRA tries to focus on the three tests, it never requires an institution to abandon safety and soundness in the name of good results.[244]

he study indicated that acks has the highest jection rate of any racial oup.

– MORTGAGE LENDING IN BOSTON: INTERPRETING HMDA DATA

A look a just a few national studies on mortgage lending practices in the last few years leaves no doubt that the CRA has a long way to go before reaching its goal of ending redlining. A study published by the Federal Reserve Bank of Boston in October of 1992 titled *Mortgage Lending in Boston: Interpreting HMDA Data* revealed that people of color are sixty percent more likely to be rejected for loans than similarly situated white applicants.[245] A study by Andriana Abaritotes entitled *Disparities In Mortgage Lending In the Upper Midwest: Does Discrimination Exist?*, considered home purchase, improvement and refinancing loans. The study indicated that blacks has the highest rejection rate of any racial group (21.7% as compared to 14.1% for Hispanics, 8.8% for Asians), and nearly triple the rate of rejection for white applicants (7.5%). Moreover, 38% of the disparity is inexplicable in terms of credit history, characteristics of the census tract where the relevant property was located or "other measurable characteristics of the loan or borrower."[246] As well, in a national audit, blacks were found to experience discriminatory treatment in the mortgage lending process 39% of the time, while Hispanics experienced discrimination 37% of the time. Limitation of access to mortgage credit occurs when: the lender discourages potential borrowers from submitting formal applications, the person appraising the property systematically underappraises certain types of property, the lender discriminates against certain types of applicants, or the lender imposes harsher terms on selective applicants.[247]

In April, 1995, *U.S. News and World Report* published the report of a six month investigation of banking, lending, and home insurance coverage in poor and minority communities. The study found the number of poor and minority homeowners who cannot obtain full coverage property

[242] Id., at 1471-72

[243] Id., at 1472.

[244] Id., at 1480.

[245] Boston Fed Issues Study Showing Connection Between Race and Credit, Fair Lending News 3 (1994)

[246] Andriana Abaritotes, et. al., Western Economics Association, Disparities In Mortgage Lending In the Upper Midwest: Summary of Results Using 1992 Home Mortgage Disclosure Act Data 34 (June 1994).

[247] William A. Leigh, Homeownership and Access to Credit, Paper prepared for Fannie Mae University Colloquium on Race, Poverty, and Housing Policy 23 *(Dec. 3, 1993) (Citing Turner, et. al., Housing Discrimination Study: Synthesis, Washington, D.C. U. S. Department of Housing and Urban Development.)*

insurance is nearly 50 percent greater than for mostly white, middle-class areas. The study reported that over the last two decades the number of bank branches in white neighborhoods had tripled compared with the number of bank branches in mostly minority areas. Middle-income black applicants from mostly minority areas were found to be more than twice as likely to be rejected for mortgage loans as middle- income whites living in mostly white areas.[248]

Community First, a D.C. based group reported in 1995 that African-Americans in D.C. lost more than $2 billion in potential mortgage loans between 1991 and 1993. The study reported that if D.C.'s African Americans had received mortgage loans at the same rate as white home owners, an additional 20,000 loans would have been made. The study also estimated a $1 billion shortfall in loans to low-and moderate-income communities.

The dismal news on the CRA's effectiveness has all come from reports taken before the 1995 revisions and though critics maintain that the amendment will not dramatically increase the impact of the CRA on institutions, they are hoping that the new ratings system will make even clearer the failings of institutions to lend to poor communities of color.

[248] *Redlining, US News & World Report.*, April 17, 1995, at 56

V. Local Strategies

Poverty and racial segregation are stratified by geography in the Twin cities. As demonstrated by numerous studies and Census maps, racial minorities and the poor are increasingly more likely to be concentrated in the urban cores of Minneapolis and Saint Paul. Minnesota communities have adopted numerous policies to address the problems of residential and educational segregation. Many of these policies replicate national strategies adopted in other communities, but in other cases Minnesota has explored its own options for reform.

A. Housing

1. *Regional Disparities*

Twin Cities development continues to sprawl outward, resulting in many people left unable or unwilling to follow. This has lead to a concentration of social problems in the core cities. A 1992 study by the Metropolitan Council pointed to the disparities between the central cities and their suburbs and identified problems to be examined with a regional perspective, because they affect the vitality of the entire region and they can only be solved by concerted regional action.[249] Similarly, a 1995 study by the United Way found people in the Twin Cities central cities and suburbs are living very different lives.[250] Although some inner-ring suburbs are beginning to share many of the characteristics of the central cities, social problems continue to be concentrated in Minneapolis and St. Paul. These problems include concentrations of poverty, population characteristics, income, economic development, and crime.

Poverty

The 1990 Census pointed to increasing disparities in poverty rates between the central cities and their suburbs. Twenty-eight percent of the region's population live in the central cities, but 60 percent of the region's poor live within their limits. In addition, poverty rates in the central cities worsened dramatically from 1980 to 1990. In Minneapolis, the increase was from 13.5 to 18.5 percent, while St. Paul saw an increase from 10.9 to 16.7 percent. Outside the core cities, the poverty rate is four to six times lower.[251]

Population Characteristics

The populations of the core cities also differ markedly from those of their suburbs. Minneapolis and St. Paul are home to the largest percentages of single-parent, female-headed households, while outer-ring suburbs have larger percentages of married couples with children.[252] In 1989, married couples with children had average incomes 129 percent of the overall average household income; single-parent, female-headed household incomes were 43 percent of the average. The percentage of female-headed households grew only slightly from 1980 to 1990, but they were more likely to live in poverty than ten years previously.[253] The central cities and inner-ring suburbs also have a higher percentage of elderly residents than outer-ring suburbs.[254]

Income

The central cities trailed the suburbs in per capita income prior to the 1980s, but through the decade the margin increased. While per capita income in the suburbs increased 21 percent, Minneapolis experienced an increase of 12 percent and St. Paul only 7 percent.[255] Median household incomes in the central cities were around $33,000, compared to $49,000 in the suburbs. In addition to geographical disparities, differences in income also appeared between whites and people of color in the 1980s. Per capita incomes for whites in the Twin Cities in 1990 was $17,902,

[249] "Trouble at the Core," Metropolitan Council, 1992:

[250] The Face of the Twin Cities: Another Look,' United Way, 1995: 8.

[251] ibid: 7 8.

[252] United Way: 30. 6

[253] Metropolitan Council: 20 22.

[254] United Way: 30.

[255] Metropolitan Council: 38.

but for people of color it ranged from $8,190 to $9,141, one of the largest differences in the country.[256]

Economic Development

Minneapolis and St. Paul continue to have the region's largest share of jobs. However, as the developing suburbs continue to emerge, they attract companies and jobs with available land and lower taxes. The Twin Cities region saw 225,000 new jobs created in the 1980s, but only about 5,000 went to the central cities.[257] While many of the jobs created in Minneapolis and St. Paul were in the service industry, the suburbs saw increases in retail and manufacturing employment.[258]

Crime

In spite of public perception fostered by sensational media coverage, the level of crime in the Twin Cities is relatively low and has been stable over the past five years.[259] A 1990 Twin Cities area poll found 26 percent of residents identified crime as more important than any other issue facing the region, twice the percentage of eight years previously.[260] Like the other social problems facing the Twin Cities, there is a difference in crime between the central cities and the suburbs. Violent crime rates in the central cities, while still relatively low, are up to ten times higher than in the suburbs. This compares to overall crime rates, which are two to three times higher in the central cities.[261]

2. *Race Relations*

The Twin Cities area is among the most highly segregated metropolitan areas, with 65 percent of people of color living in the central cities.[262] Even within the central cities, the populations of white and African American residents are largely segregated by neighborhood, leading to a lack of understanding and communication.

A 1990 Minnesota Poll found that Minnesotans live in different circles. Statewide, 42 percent of all adults surveyed said they had no direct contact with members of minority groups— not as friends, guests in their homes, or as co-workers. Even in Minneapolis and St. Paul relations are not much closer, as reported by the Star Tribune: Seventeen percent of whites living in the two cities said they have three or more friends who are people of color, compared to about one in 10 of Minnesotans statewide.[263]

Perhaps as a result of this lack of contact, more specific questions about experiences relating to race drew very different pictures. Forty percent of Minnesotans said racial equality has been achieved, while two-thirds of minorities living in the central cities surveyed said that was not the case. Three quarters of minority Minnesotans surveyed said they had personally experienced discrimination in finding employment or housing, shopping at retail stores or making friendships.[264]

In response to the Los Angeles riots in 1992, the St. Paul Planning Commission spoke with 130 unemployed persons, single mothers with low incomes and young people to report on poverty and racial tension in the city.[265] Their findings included personal stories about racial tension people encountered in the city:

- A black man approached me in a supermarket parking lot last winter and asked if I could help him jump start his car. While I went to get my jumper cables, he started explaining that

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[256] United Way: 26.

[257] Metropolitan Council: 18.

[258] United Way: 24.

[259] ibid: 36.

[260] Metropolitan Council: 30.

[261] ibid.

[262] *The Face of the Twin Cities: Another Look*, United Way, 1995.

[263] von Sternberg, Bob. "In Minnesota, races are isolated from one another" *Star Tribune*, June 12, 1990: 9A.

[264] von Sternberg, Bob. "Race not an issue to many; But minorities view situation differently" *Star Tribune*, June 12, 1990: 9A.

[265] *Voices of Pain and Hope in Saint Paul*, St. Paul Planning Commission, November 1992.

all black men aren't bad. When I told him he didn't have to explain to me or apologize for who he was, he told me I was the fourteenth person he had asked for help (white man).

- My son wanted to buy some shoes. He had the money he'd earned. A security guard in the store came and asked him if he'd stolen the money or gotten it dealing drugs. My son is angry. I'm afraid for my children. How can I give them self-esteem when they are regarded with suspicion by society and the police? (African American woman)[256]

A 1990 series on race relations in the Star Tribune also told the personal stories of Twin Cities residents and their experiences with race:

- An African American reporter wrote in her journal: ... I'm faced with the fact that since I moved to Minnesota I've become ever so self-conscious of my Blackness. It preoccupies my thoughts. It affects the way I relate to just about everyone I meet. It makes me analyze situations and experiences that two and a half years ago I would have dismissed without a second thought. More and more I feel that it's us against them.[257]
- A white colleague wrote: ... I've become so conscious of my interaction with men and women of color that I don't want to screw it up. I don't want to say something stupid that can be construed as racist. I want to be a good white person, to be supportive, appreciative and open. And I don't want to make any mistakes with blacks especially and seem anything other than decent and fair.[258]

Recent statistical analysis of Twin Cities HMDA data found that almost 70% of the disparity between home mortgage loan rejection rates of nonwhites and whites is due to the unequal treatment of similarly qualified loan applicants

3. *Racial Discrimination and Mortgage Lending*

The incidence of racial discrimination in home mortgage lending is well documented. As a result of this practice African-Americans and people of Hispanic decent have been denied access to what is for most Americans the single most important source of wealth. A 1988 study that examined the median net worth of married couples found that when household equity was excluded, net worth declined by 28%. Home ownership also brings with it a favored tax status, as homeowners are permitted to take deductions in mortgage payments and property tax payments from their taxable income.

Studies indicate that the difference in home ownership between whites and blacks and Hispanics is not entirely the result of economic differences. Analysis of 1990 and 1991 HMDA data showed higher denial rates for African-Americans and Hispanics. These findings sparked a debate about whether the higher rejection rates were evidence of discrimination or reflected the generally poorer credit ratings of credit applicants in these groups in comparison with white applicants. In what has been characterized as one of the four events that shook the credit market, the Federal Reserve Bank of Boston published a study that found that after controlling for financial, employment, and neighborhood characteristics, African-American and Hispanic applicants in the Boston Metropolitan area are roughly 60% more likely to be turned down for home mortgage loans than whites. The authors of the study isolated the cause of this finding to perceptions of an individual's credit worthiness. Whites, even whites with less than perfect credit histories, enjoy a general presumption of credit-worthiness. African-Americans and Hispanics, however, do not benefit from this presumption.

Recent statistical analysis of Twin Cities HMDA data found that almost 70% of the disparity between home mortgage loan rejection rates of nonwhites and whites is due to the unequal treatment of similarly qualified loan applicants. The study determined that very little of the gap in rejection rates between blacks and whites or between Asians and whites in the Twin Cities metro area can be explained statistically by loan, borrower, or neighborhood characteristics. A subsequent paper on the subject using similar statistical techniques, reported similar findings using data from the state of New Jersey. The study also found that 70% of the racial gap in loan denial rates can be accounted for by racially discriminatory practices.[260]

[256] ibid, 12-13.

[257] Bentley, Rosalind. "The noon hour can be a lonely time at the Star Tribune," *Star Tribune*, June 11, 1990: 9A.

[258] Eaton Hopper, Susie. "Judging the actions of all, based on actions of a few," *Star Tribune*, June 12, 1990: 9A.

a. **Home Ownership Programs for Low to Moderate Income Buyers**

In addition to the statistical analysis of upper Midwest HMDA data, some attempts have been made to identify the major governmental, private, and community based programs designed to ameliorate the disparity in the extension of credit for home ownership between blacks and Hispanics, and whites. Twin Cities private lending institutions and public finance entities have initiated numerous programs to provide minorities access to credit for home ownership. In fact a Minnesota bank is the largest minority lending institution in the country according the Department of Housing and Urban Development.

Private Programs

Private ownership programs typically relax underwriting standards and allow flexibility in demonstrating credit history. For example Norwest Bank's Community Home Ownership Program allows potential homebuyers to use rent and utility payments as confirmation that the family is a good credit risk.

Government Programs

The Minneapolis Housing Finance Agency has 11 programs to encourage home ownership by low income families. The programs offer various forms of assistance, including below market interest rate financing, monthly payment assistance, and closing cost assistance. The MHFA program also includes grants and revolving loan funds to enable community groups to renovate housing for sale to low income families.

Community Initiatives

The McKnight Foundation's Family Housing Fund is an example of a foundation/community partnership. The fund involves foundations, community development staff, low-income housing developers, and human service agencies. Like the MHFA programs, the Fund both develops its own programs and provides support to other organizations. The family housing fund was instrumental in the creation of the Minneapolis and St. Paul Mortgage Revenue Bond Program.

4. *Exclusionary Zoning*

Regulatory and administrative practices that function to keep low and moderate income groups and racial and ethnic minorities, out of a community have been identified as Exclusionary Zoning. These procedures are said to be exclusionary because they increase the price of housing either through land costs, building costs or utility connection costs. Because local property taxes are the principal revenue source for city services, local governments have minimal financial incentive to amend these regulations.[270]

In the Twin Cities Metropolitan Area, cities have almost complete autonomy over their land use and development. There is no ubiquitous set of exclusionary practices carried out by every community, but each community has at least one, and in most cases a combination of regulatory and administrative procedures that function in an exclusionary manner. A number of recent studies have discussed the impact of regulatory land use practices on low-income housing development and confirm that they limit residential choice for low and moderate income households.

Twin Cities low income households are disproportionately concentrated in the core of the central cities and to a lesser extent in the inner ring suburbs, as are conditions that indicate problems such as poverty, crime, and unemployment.[271]

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[269] Tze Chan and Samuel L. Myers, Jr., "Racial Discrimination in Housing Markets: Accounting for Credit Risk", *Social Science Quarterly*, Volume 76, No. 3, September 1995 and *Disparities in Mortgage Lending in the Upper Midwest: Summary of the Results Using 1992 Home Mortgage Disclosure Act Data.*

[270] See Barbara Lukerman and Michael Kane, *Land Use Practices: Exclusionary Zoning, de Facto or de Jure?*, Center for Urban and Regional Affairs, University of Minnesota, 1994.

[271] See the Metropolitan Council's Keeping the Twin Cities Vital

Areas of Highly Concentrated Poverty within the Core Area
Census Tracts with 25% or more of their Population Living Below the Poeverty Level

Area and Year	Poverty rate of Racial Minority Population		Poverty rate of White Population	
	Poverty Rate	*Rank*	*Poverty Rate*	*Rank*
Twin Cities Region 1979	26.3%	13	5.8%	23
Twin Cities Region 1989	33.8%	3	5.9%	19
Mpls. and St. Paul 1989	43.7%	1	11.0%	14
Remainder of Twin Cities Region 1989	14.1%	15	4.4%	20

— *Source 1980 and 1990 Census*

Because the majority of housing that is affordable to the poor is also located in the core of the cities and inner ring suburbs, and local land use practices limit the amount of affordable housing available to those households beyond the central cities, their residential choice is severely constrained. The problem is not one developing suburbs can easily ignore, as the percentage of poor earning less than 30% of median family income currently residing in those cities exceeds the percentage of affordable housing supply.

a. **Metropolitan Council Recommendations and Resistance to Change**
Under the Metropolitan Development Guide, each local unit of government must present to the Metropolitan Council a consolidated plan for housing and community development that addresses projected housing need and promotes the availability of low and moderate income housing. The Metropolitan Development Guide encourages the placement of affordable housing throughout the Metropolitan area, and requires that communities establish affordable housing goals, polices that address how the goals will be met, and strategies for meeting those goals. According to the Council, one of the ways that communities can meet their affordable housing goals is by relaxing zoning regulations that act as a barrier to its construction. The Council has made recommendations about the following land use and regulatory practices:

- Minimum Lot Sizes
- Maximum Densities
- Floor Area Minimum Requirements
- Two Car Garage Requirement
- Manufactured Housing
- Administrative Fees Associated with the Cost of Development and Service Connection Charges

The Metropolitan Council recommends that local governments permit exceptions to, lessen, or completely eradicate these policies in order to create realistic opportunities for the development of affordable low income housing. Few communities have adopted their recommendations. For example, only one-third of the metro area's minimum lot size requirements correspond to the guidelines established by the Council and in communities where the majority of new home construction is occurring, only 15% of the communities have adopted the Council's recommendations.

Both individual city and state consolidated plans recognize the significance of land use planning practices and regulatory requirements as a barrier to residential mobility for low income households. Established cities are concerned with maintaining or improving the value and quality of their existing housing stock and developing suburbs seek to develop high value residential structures. Although the characteristics of the individual policies differ, the intent and impact are the same. The Minneapolis Plan concedes that regulatory controls discourage the rehabilitation of low

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income rental properties but maintains the standards in the interest of eliminating structures that have a blighting influence. The State Plan also acknowledges exclusionary impact but makes no recommendations for altering existing land use practices.

b. **Metropolitan Livable Communities Act**

The Twin Cities has been recognized nationally for its efforts in regional government and tax-base sharing. The Metropolitan Council and the Fiscal Disparities Act, both more than twenty years old, provide models for other metropolitan areas as they grope for ways to deal with demographic and economic changes. However, efforts to look regionally at issues like affordable housing in the Twin Cities have, until recently, met with little success. Representative Myron Orfield has been at the forefront of the expansion of the regional scope of legislation in the early 1990s with mixed results. Orfield authored a series of legislation under the title, Metropolitan Community Stability Act in the 1993 and 1994 legislative sessions. The legislation gradually won the support of central city, inner-ring suburb and some rural lawmakers, but was vetoed by Governor Arne Carlson.

While these efforts failed, the spirit of regional collaboration survived. In the 1995 legislative session, the Metropolitan Livable Communities Act (MCLA) was authored by Senator Ted Mondale and Metropolitan Council Chair Curt Johnson. This proposal left out the mandatory nature and penalties of the previous legislation and concentrated on housing and environmental issues. The act was passed by the legislature, signed by the Governor and become law in 1995.

The MCLA provides financial incentives to communities choosing to participate in a project to build affordable housing, clean up polluted land, or create demonstration projects for compact development and development near transit. In exchange for the incentives, the communities must spend a designated amount of tax revenues from high-value homes on affordable housing and remove barriers to building affordable units. If they do not meet their target by 1998, the community must transfer the designated revenue to their housing authority to build the housing, or turn it over to a metro-wide fund for use in another community. In addition, the Metropolitan Council may chose to consider the community's progress toward its goal or participation in the program in planning for new infrastructure development.[272]

As of January 1996, 97 of 189 communities in the Twin Cities area had committed to the program, representing 90 percent of the area's population.[273] Both central cities are part of the program, as are several developed and developing suburbs. The Metropolitan Council assigned benchmarks in six areas for each participating community: percent of affordable housing (owner-occupied and rental), percent of non-single family detached units, owner-occupied/rental breakdown of housing stock, density of residential development (single family and multifamily). Affordable housing was defined as homes valued at $115,000 or less (affordable to families at 80 percent of median income) and rental units with monthly rents of $500 or less (affordable to families at 50 percent of median income). Participating communities then negotiated with the Metropolitan Council to set housing goals for the year 2010, which might fall below the benchmark level if a rationale was provided.

Minneapolis and St. Paul already meet or exceed their share of affordable housing units in the metropolitan area. Minneapolis has 88 percent affordable owner-occupied units and 67 percent affordable rental units; the rates are 90 percent and 68 percent, respectively, in St. Paul. However, other communities fall short. A sample of these communities and their current levels of units, Metropolitan Council benchmarks and goals follow.

[272] "Metropolitan Livable Communities Law." Metropolitan Council, 1995.

[273] "About 100 communities commit to meeting affordable housing needs." *Council Directions*, Metropolitan Council, January/February 1996.

Table 3

Affordable Owner-Occupied Units

City	Current Level	Benchmark	Goal
Eagan	62%	69-70%	62%
Eden Prairie	42%	64-69%	30%
Edina	31%	64-77%	31%
Maple Grove	69%	69-77%	69%
Minnetonka	47%	60-69%	50%
Plymouth	42%	62-77%	21%
Shoreview	80%	68-69%	62%
Wayzata	43%	60-69%	Use Numerical Goals
Woodbury	55%	69-74%	Low Density 39% Townhome Platted 77% Medium Density 77%

Affordable Rental Units

City	Current Level	Benchmark	Goal
Eagan	22%	35-40%	Move toward 35%
Eden Prairie	11%	33-35%	20%
Edina	14%	32-34%	14%
Maple Grove	4%	35-41%	35%
Minnetonka	17%	35-37%	60%
Plymouth	19%	35-41%	35%
Shoreview	42%	35-48%	42%
Wayzata	38%	35-37%	Use Numerical Goals
Woodbury	15%	35-48%	25%

Source: Metropolitan Livable Communities Act Negotiated Affordable and Life-Cycle Housing Goals 1996, Metropolitan Council, January 1996.

c. **Hollman vs. Cisneros: The Barriers to Effective Implementation**

In 1995, the parties to a lawsuit brought by minority residents of public housing in Minneapolis agreed to a settlement. The public housing residents claimed that the Department of Housing and Urban Development had administered the public housing programs in a manner that perpetuated existing patterns of racial segregation. They also claimed that the Minneapolis Public Housing Authority managed the Section 8 certificate program so that low income, minority participants were concentrated in a few segregated neighborhoods in Minneapolis. The purpose of the consent decree is to set out a series of actions to be taken by the defendants which will promote equal housing opportunity, expand and maximize geographic choice in assisted housing, and encourage racial integration.[274] The major provisions of the consent decree are as follows:

New Public Housing Units

770 units of public housing will be removed. Of the 770, a minimum of 80 will be located in Minneapolis and 200 in the surrounding communities. The new units may not be located in areas that have high concentrations of poverty nor should they, in general, be located in areas that have high concentrations of minorities.

Section 8 Certificates

HUD will provide funding for 600 tenant-based Section 8 Certificates and 300 vouchers. Recipients of the subsidies will receive counseling for locating housing in the Twin Cities private housing market.

Hollman vs. Cisneros and similar lawsuits are responsible for the first significant attempts at the federal level to address historical concentration of low income African-Americans in neighborhoods that already have a high degree of poverty and racial segregation. The remedy proposed by the Federal Government and the MPHA is similar to those proposed for cities and their public housing authorities all over the country. There are currently 20 such cases pending in the courts. Research on the outcome of the *Gatreaux* case, a similar public housing concentration lawsuit in Chicago, provides a good indication of the promise of remedies that expand the residential choice of low income minority households, particularly those that have been able to relocate to suburbs where they have access to increased employment opportunities and better schools. In the Twin Cities and cities facing similar remedies, there is concern about barriers to achieving the intent of the remedy.

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[274] Heidi K. Zimmer, *Public Housing in Minneapolis*, unpublished Plan B paper.

d. Barriers to Implementation

Zoning

Among the Most Important Barriers to the Implementation of the Consent Decree Are the Zoning and Land Use Practices of the Suburbs in Which 200 of the Scattered Site Units Are to Be Constructed. Because Suburbs Rely Primarily on Property Taxes to Finance Public Services, Municipalities in the Twin Cities Have Little Fiscal Incentive to Voluntarily Construct Subsidized Housing That Provides the City with No Property Tax Revenue. The Issue of the Location of the Subsidized Units Has Yet to Be Resolved.

Nimby or Not in My Back Yard

Strong NIMBY sentiments concerning the placement of scattered site public housing in their communities are felt by suburban residents and their government representatives. The state's consolidated plan also documents the existence of the phenomenon. A focus group convened to discuss barriers to affordable housing suggested that the lack of political leadership concerning this issue contributes to minimal public support.[275] This indicates that political leadership and increased education on the subject could lead to a change in public attitudes.

Supply of Affordable Units - Suburbs

The residential choice of households in the low income housing market may continue to be constrained and limited to the central cities because of 1) a tight rental market in the suburbs; 2) existing program guidelines in which landlords are not obligated to participate in the program; and 3) low fair market rent levels (the FMR is the most a landlord may charge for a unit assisted with a section 8 certificate). The recently lowered fair market rent levels have made 1,839 fewer rental units available to section 8 holders in the twin cities.[276]

Supply of Affordable Units - City

Those families who wish to live in non-concentrated areas of the city may not fare any better than their suburban counterparts. According to the Minneapolis Consolidated Plan there is a shortage of units that are affordable to households with incomes below 30% of median income.

B. EDUCATION

1. *Minnesota Policies on School Choice and Desegregation*

In 1994, Minnesota focused its desegregation efforts by creating an Office of Desegregation-Integration in the Department of Education and by increasing grant and fellowship awards to encourage and reward minority teachers. The state also created an exchange program for staff between districts with desegregation plans and those without plans to foster increased awareness of different desegregation efforts. Roughly $1 million was allocated to integration programs, including the fellowships and exchange programs.[277]

Minnesota policy initiatives that have addressed school choice have been diverse over the last decade. The choice programs, intended generally to provide students with greater educational options, vary in their scope: magnet programs and open enrollment options were designed to facilitate choice between districts; the voucher proposal was geared towards choice between public and private systems; and the postsecondary enrollment program was designed to facilitate student choice between high schools and postsecondary institutions.

Critics of choice programs often cite the difficulty of educational planning, risk of privatizing public education, the reliance on free-market conditions that would escalate competition between schools and thus potentially increase the gap in quality between schools, and the potential subversion of desegregation efforts as outweighing potential benefits from increased educational

[275] State of Minnesota, *Consolidated Housing and Community Development Plan FFY 1996*

[276] Community Action for Suburban Hennepin, Diminished Choices: *The Shrinking Market for Section 8 in Suburban Hennepin County.*

[277] I. Barry Sullivan, "Selected Education Reforms and Policy Trends Since 1983," Minnesota Department of Children, Families and Learning, January 31, 1996, 22-23.

choices. The NAACP developed a list of guidelines for evaluating choice programs: the school population should mirror the overall demographics of the system; external monitors should be established to prevent resegregation by race or socio-economic factors; schools should be located in racially, ethnically, and socio-economically neutral areas; and talented and high socio-economic students should not be disproportionately drawn away from their neighborhood schools.[278] Choice programs should be evaluated to the extent to which they give real options to all students and whether a base of academic excellence extends to all schools within a district.

Conversely, one of the strongest critics of metropolitan desegregation in Minneapolis comes from the Center of the American Experiment. In March, 1995, Katherine A. Kersten, the Center's vice-chairperson, wrote "Good Intentions are Not Enough," faulting desegregation efforts for a lack of research recommending their use and effectiveness.[279] The article was written in response to two rules adopted by the State Board of education to extend desegregation efforts for schools in Minneapolis and Saint Paul to the seven-county metro region and require districts to close the "racial learning gap" on performance measures ranging from academic performance to dropout rates.

Kersten believes these goals have little chance of being realized. She foresees danger for the state in purporting to raise achievement and performance measures and thus establishing a potential legal claim for dissatisfied students and families against the state and even individual school districts. Such broad state-wide policy constructions also bring with them the disfavored idea of "big government" with a requirement for state approval of a districts compliance on performance improvement measures. These broad proposals, for Kersten, carry a big price tag which are infeasible in light of current and future fiscal constraints.

Another criticism of the desegregation plan is the interjection of racial considerations across educational planning levels. Kersten contends that such an initiative would be a step back from *Brown v. Board of Education* and the advocacy of Martin Luther King, Jr., because educational decisions regarding students wold still be determined to a large degree by race. By strengthening desegregation efforts, the state would be perpetuating a society divided along racial lines.

Finally, the Center of the American Experiment report argues that the efforts to equalize educational funding will not necessarily equalize the performance gap. According to Kersten, many socioeconomic factors beyond the scope and control of the educational system are the cause of the learning gap such that the remedies sought by the state will have little or no efficacy in changing student performance.

Overall, Kersten's arguments pose important challenges to proponents of educational desegregation strategies. Detailed attention to her claims about the causes of the learning gap, as well as possible educational and other strategies to address this gap are warranted.

minnesota education choice programs

Minnesota has adopted several recent choice initiatives.

The Postsecondary Enrollment Options (PSEO) program was enacted in 1985. It permits eleventh and twelfth graders to enroll in postsecondary schools with funds that would have gone to the school districts. In the 1994-95 school year, 6,659 students utilized this program; 4,400 students took courses through the College in the Schools program, which allows students to take some college courses through agreements reached between the school districts and postsecondary institutions.[280] Most students choose to take courses through the community college system, followed by the University of Minnesota. To be eligible to participate in the PSEO program,

[278] NAACP, "School Desegregation The Unfinished Agenda," Proceedings from the Daisy Bates Educational Summit, 1992, 14-15.

[279] Katherine A. Kersten, "Good Intentions are Not Enough," (Center of the American Experiment, March, 1995).

[280] Barry Sullivan, "Selected Education Reforms and Policy Trends Since 1983," Minnesota Department of Children, Families and Learning, January 31, 1996, 15.

students must be enrolled in a Minnesota public school district. During 1994-95, 64 percent of the PSEO students were female and 59 percent of program participants had total family income of at least $45,000.[281] Minority students had an equal eligibility and participation rate of 10 percent. A disproportionate of participating students, however, were from the Minneapolis and St. Paul school districts: students from these two districts made up 8 percent of the students eligible for the program statewide and 17 percent of the program participants.[282]

Open enrollment was enacted in 1987 as a voluntary program to provide public school students with greater choice within the system. The program became mandatory in 1990-91. Under the program, students are permitted to enroll in any public school regardless of traditional district boundaries. Restrictions to open enrollment may only be imposed if programs or classes are full, a district declares itself "closed" to all transfers, or if incoming students would disable desegregation efforts (e.g., minority students from the suburbs cannot elect to go to city schools, and white students from the city cannot choose to attend suburban schools). In 1994-95, 16,653 students used this choice option to attend non-district schools.[283]

High School Graduation Incentives (HSGI) was implemented in 1987 to give dropouts and "at risk" students the chance to enroll in schools, postsecondary institutions (for eleventh and twelfth graders), or alternative programs outside of their district boundaries. The program has been expanded to include elementary school-age children to people 21 and over who have not graduated from high school; the program also has been expanded to include nonprofit and non-public schools in the spectrum of options. 11,679 students participated in this program in 1994-95.[284]

Area Learning Centers were developed in 1987 also to serve "at risk" secondary school students and adults who wish to finish high school in an alternative setting. The Centers are a joint effort between two or more districts. In 1994-95, 30,700 students (85 percent of them between ages 12 and 20) enrolled in the Area Learning Centers on a part- or full-time basis.[285] A 1990 poll of 13,000 students indicated widespread satisfaction with the Centers, including increased academic goals extending into postsecondary enrollment and a high level of participation among students of color and from low-income and limited English speaking families.[286]

Charter schools received state legislation in 1991, permitting one or more teachers to form a nonsectarian, tuition- free school free from most of the rules and regulations affecting most school districts. Funding for charter schools comes from general education revenue equal to the state average general education revenue per pupil unit, capital expenditure equipment revenue, and special education aid. Like traditional school districts, charter schools are also eligible for state aid and other grants for such needs as transportation, equipment, and for Limited English Proficient (LEP) students. The cap on the number of statewide charter schools has been raised from 8 in 1991 to 40 in 1995, yet only 17 charter schools have received approval from the State Board of Education.[287] Many charter schools have avoided the mainstream student population and concentrated their efforts on culturally specific schools, such as the Prairie Island school in Red Wing; schools for special needs students, such as the Metro Deaf school in St. Paul; special interest areas, such as Minnesota New Country in LeSueur's focus on technology; or at-risk students, such as New Heights in Stillwater.[288]

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[281] Program Evaluation Division, Office of the Legislative Auditor of the State of Minnesota, "Postsecondary Enrollment Options Program," March 1996, 48-51.

[282] Ibid., 48-49.

[283] Barry Sullivan, "Selected Education Reforms and Policy Trends Since 1983," Minnesota Department of Children, Families and Learning, January 31, 1996, 15.

[284] Ibid.

[285] Ibid., 16.

[286] Ibid.

[287] Ibid.

[288] Mary Jane Smetanka, "Pioneering Schools Learn Tough Lessons," *Star Tribune* 4/25/96, A18.

Although charter schools were designed to be innovative alternatives to traditional public schools, many have not realized or prompted dramatic changes in education. Yet many charter schools in Minnesota can point to their successes with good attendance, pleased parents, and waiting lists for their schools. The City Academy, which is the nation's oldest charter school and is geared to helping high school dropouts finish school, had 90 percent of their graduates qualify for two-or four-year college degree programs in 1992-93 and 1994-95.[290] Charter schools also went against predictions that they would drain the best students out of the public schools and are actually educating a disproportionate number of at-risk students. Minority students also attend charter schools in disproportionately high numbers: in the fall of 1994, black students comprised 15 percent of all charter schools students yet they totaled only 4 percent of the public schools students in the state.[291]

Magnet schools, often referred to as choice systems within school districts, have received continued local support. A Magnet School Grant program was established with $1.5 million to develop magnet schools and programs. Metropolitan Magnet School Grants were allocated $20 million from state bonds to promote and develop magnet programs across districts. As of January 1996, $10 million has been awarded to the proposed East Metro Area Magnet School, serving St. Paul, Roseville, and the North St. Paul-Maplewood-Oakdale school districts.[292] A second grant for a facility that would serve Minneapolis and its surrounding school districts is under development. As a desegregation tool, selective magnet schools have been criticized for siphoning off the resources, academic programs, students, and teachers from other district schools and decreasing the social and economic integration in the non-magnet schools.[293]

Minnesota has also considered educational vouchers. In 1996, Governor Carlson unveiled his voucher plan as a means to give choice to poor families, opening up the option of private school. Although the Governor's plan was tabled early in the 1996 legislative session, it had received significant attention over the last few years. The plan, with strong support from Bruce Johnson of the Department of Children, families, and Learning, called for directly funding students in Minneapolis, Saint Paul, Brooklyn Center, and a rural district. It would have allowed for students to apply their state vouchers to public or private schools, including religious schools. The voucher would allot $500 vouchers and increasing increments thereof up to $3,000 to students based on family need. For a family of four earning $41,600 or at 275% of poverty level wold qualify for the $500 minimum voucher, with a family of four at 130% of the poverty level, they would receive a $3,000 voucher. While the effects on the public school system from the Governor's plan are unknown, the fear is that public schools will continue to serve the broadest student population with the highest needs (low-income students, students with disabilities) and do so with a drop in funding that will be diverted to the private sector. The private schools would still be free of much external regulation and could opt out of the program altogether. While the Governor's plan is not as actively discussed currently, its presence in future legislative sessions is very likely in the present climate where choice in education receives paramount interest.

2. *General Financing and Demographic Trends in Minnesota*

In the 1995-96 school year, state and local revenue allocated for education was over $5.1 billion, the largest single expense in the general fund budget; approximately 4 percent of total district revenue comes from federal funding. Funding increased dramatically in the 1980s—almost 84 percent since 1984—especially relative to inflation—which rose only 41 percent during the same period. Revenue increases have slowed in the 1990s along with economic growth. A general decrease in available federal funds will increase the demand for state resources; health care for a growing elderly population and crime will increasingly vie for education revenue within the state.

[290] Ibid.

[291] Ibid.

[292] Ibid.

[293] Barry Sullivan, "Selected Education Reforms and Policy Trends Since 1983," Minnesota Department of Children, Families and Learning, January 31, 1996, 23.

[294] NAACP, "School Desegregation The Unfinished Agenda," Proceedings from the Daisy Bates Educational Summit, 1992, 15.

Public school enrollment, however, has increased to roughly 831,997 students in 1995-96 and is projected to grow to 868,000 in 2005. Much of this growth, however, is estimated to be concentrated in metropolitan areas in and surrounding the Twin Cities, St. Cloud, and Rochester. The Department of Education further projects that the 7 metropolitan counties will gain 54,000 students in the next five years while the other 80 counties will have a net loss of 4,000 students.[296]

Poverty levels for children are also increasing, with children comprising nearly one-third of all Minnesotans in poverty and accounting for 40.7 percent of the total increase in poverty in Minnesota during the 1980s. The percentage of minority students in Minnesota public schools is also increasing. The increase in minority students between 1980 and 1986 was 28 percent while white students decreased by 10 percent in the same period.[297] The state Department of Education has projected an increase in per pupil expenditures from 1994 to 2005, but when adjusted for inflation, the allocation represents a decrease of roughly $500.[298]

V. CONCLUSION

Economic and racial segregation persists in the 1990s, potentially damaging the economic health of individuals and families as well as the communities and the larger metropolitan regions in which they live. Location of one's residence appears to affect access to a variety of opportunities, including decent jobs, good schools, affordable health care, business and home financing, and social contacts. Racial and economic segregation deny individuals the ability to access these various opportunities that are critical to alleviating poverty and transforming individuals to fully productive citizens and members of their community.

Poverty levels for children are also increasing, with children comprising nearly one-third of all Minnesotans in poverty and accounting for 40.7 percent of the total increase in poverty in Minnesota during the 1980s.

– MINNESOTA PLANNING REPORT

Numerous strategies have been offered to address the problems of residential and educational desegregation. Mobility and in-place strategies are two techniques to address segregation, and both need to be employed to enhance the economic and housing opportunities of racial minorities and the poor. Key to their success is suburban acceptance, support, and cooperation with cities in designing programs that treat inner-city poverty and racial segregation as a metropolitan-wide problem meant to be solved together in a metropolitan-wide fashion.[299]

The Twin Cities unfortunately shares many of segregation problems that other metropolitan centers have. The urban cores are increasingly characterized by high concentrations of poverty and racial segregation. The result has been to create unique educational and residential problems for minorities and the poor. Several policy options have been implemented to address these problems, producing mixed results in terms of addressing the problems associated with segregating the metropolitan region by race and income.

Future research will examine ways in which local policies deal with segregation, including providing analysis of the impact of specific programs as well as offering recommendations and strategies for change. Among the questions that need to be asked include:

- How do current housing and educational policies concentrate low-income and minority populations in specific areas of the Twin Cities?
- What impact does such a concentration have upon low-income and minority populations and upon areas in which they live?
- What solutions are there to desegregating low-income and minority populations and how might educational and housing policies be linked to encourage integration?
- What benefits would there be for the Twin Cities in deconcentrating low-income and minority populations?

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[296] Barry Sullivan, "Selected Education Reforms and Policy Trends Since 1983," Minnesota Department of Children, Families and Learning, January 31, 1996, 22 23.

[297] Ibid.

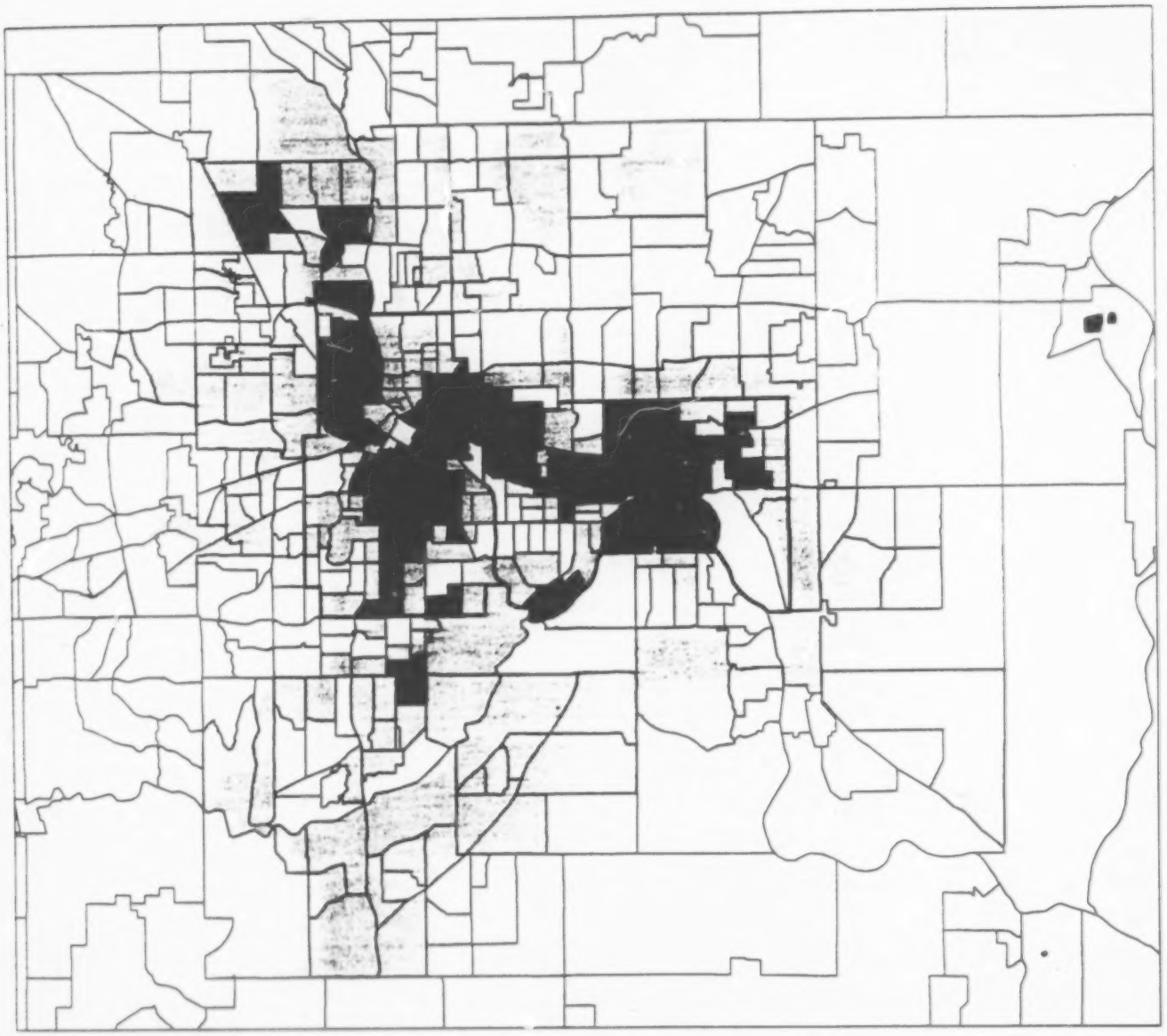
[298] Minnesota Planning Report, Minnesota Department of Education, 1995, y-12.

[299] Harold L. Hodgkinson, "Students at Risk: A Study of Three Minnesota Counties," Report for The Institute for Educational Leadership, December 1990, 5.

[300] Minnesota Planning Report, Minnesota Department of Education, 1995, q 45.9

[301] Keating, *Dilemma*. p 28-29.

Detail: Percentage Minorities in Seven County Metropolitan Area by Census Tract



Source: 1990 US Census

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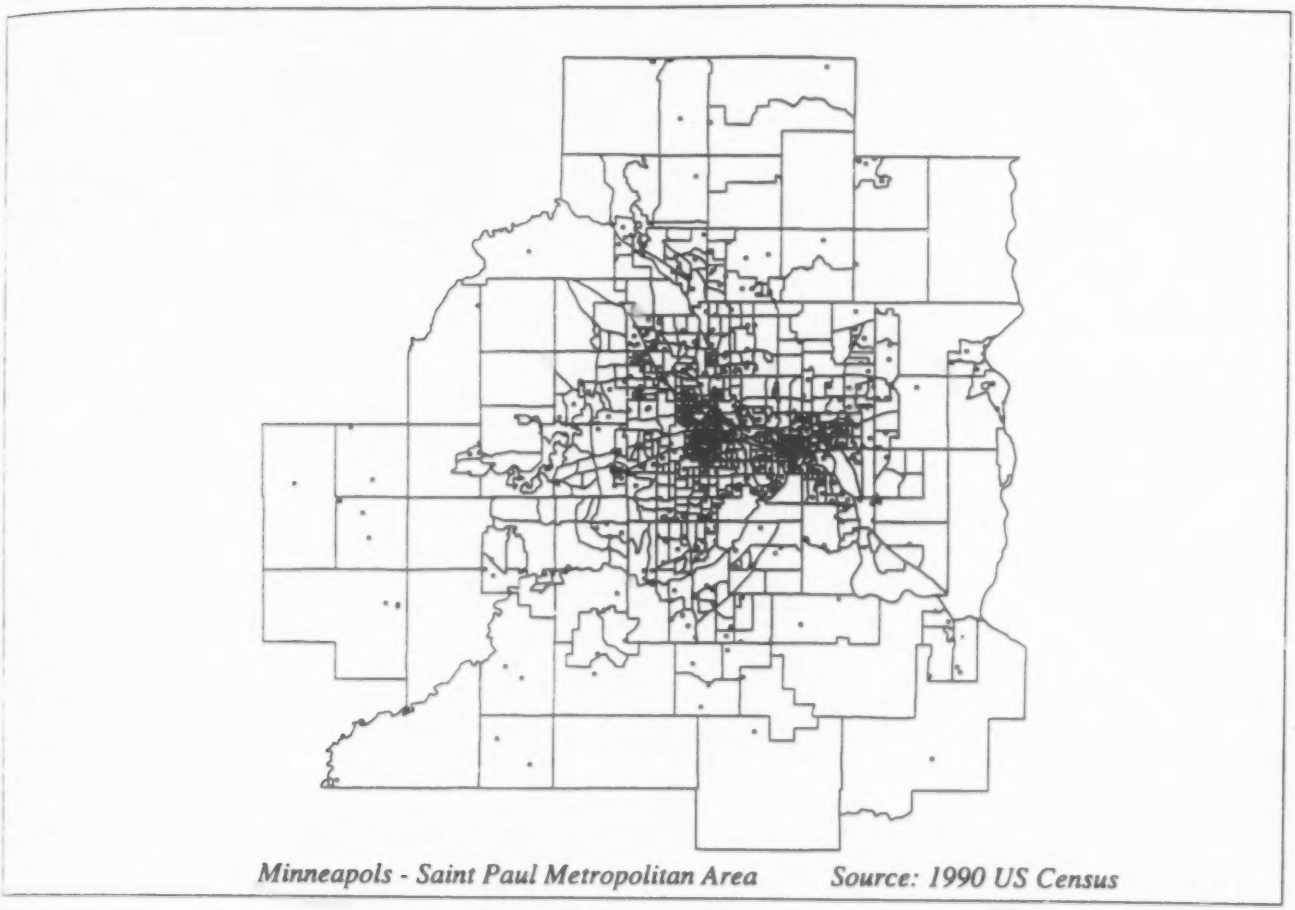
Percent Minorities	
53.2 - 93.7	(32)
27.3 - 51.9	(29)
11.3 - 27.2	(75)
5.0 - 11.2	(182)
0.0 - 4.9	(287)

Total Families Below Poverty Level



Minneapols - Saint Paul Metropolitan Area *Source: 1990 US Census*

Total Families Below Poverty

1 Dot = 50

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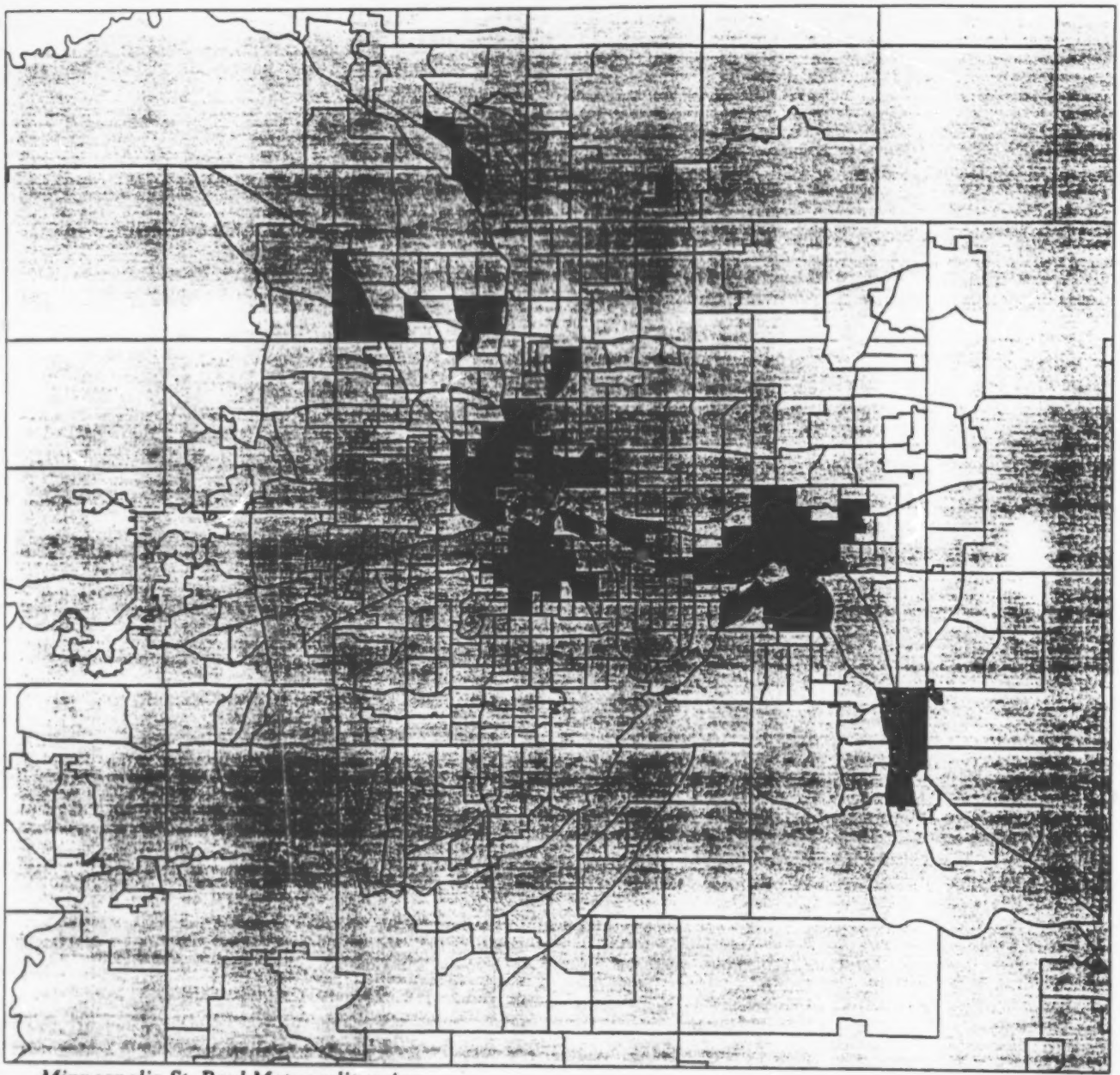
Percentage of Households Receiving Public Assistance

By Census Tract



Minneapolis-St. Paul Metropolitan Area

Source: 1990 U.S. Census. STFA1, STFA3

Households Receiving Public Assistance
Percentage of Total Households

- 50.01 to 75 (4)
- 25.01 to 50 (27)
- 10.01 to 25 (71)
- 0 to 10 (504)

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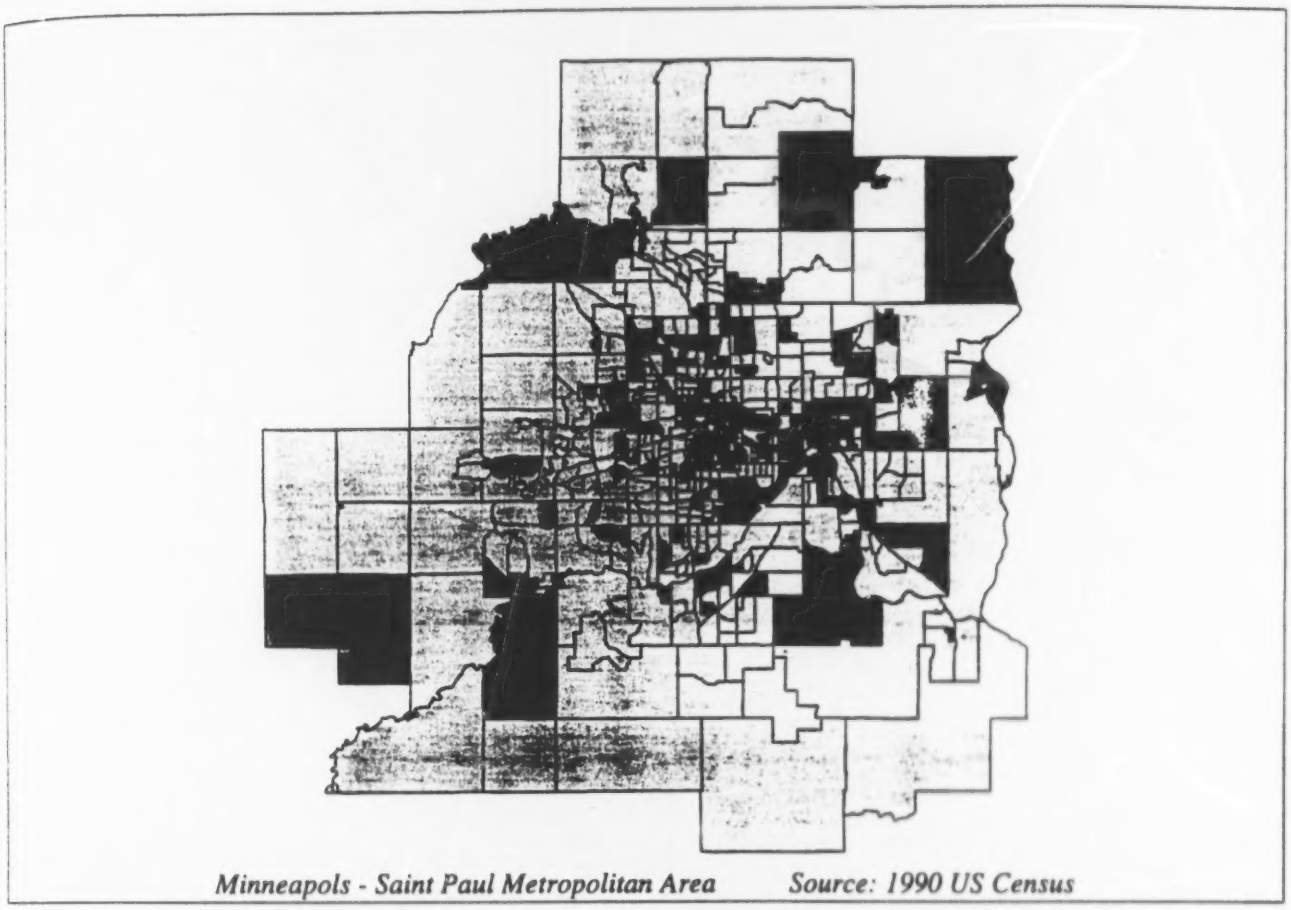
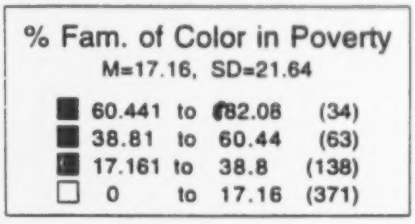
Percentage of Families of Color in Poverty by Std. Dev.

by Census Tract



Minneapols - Saint Paul Metropolitan Area *Source: 1990 US Census*



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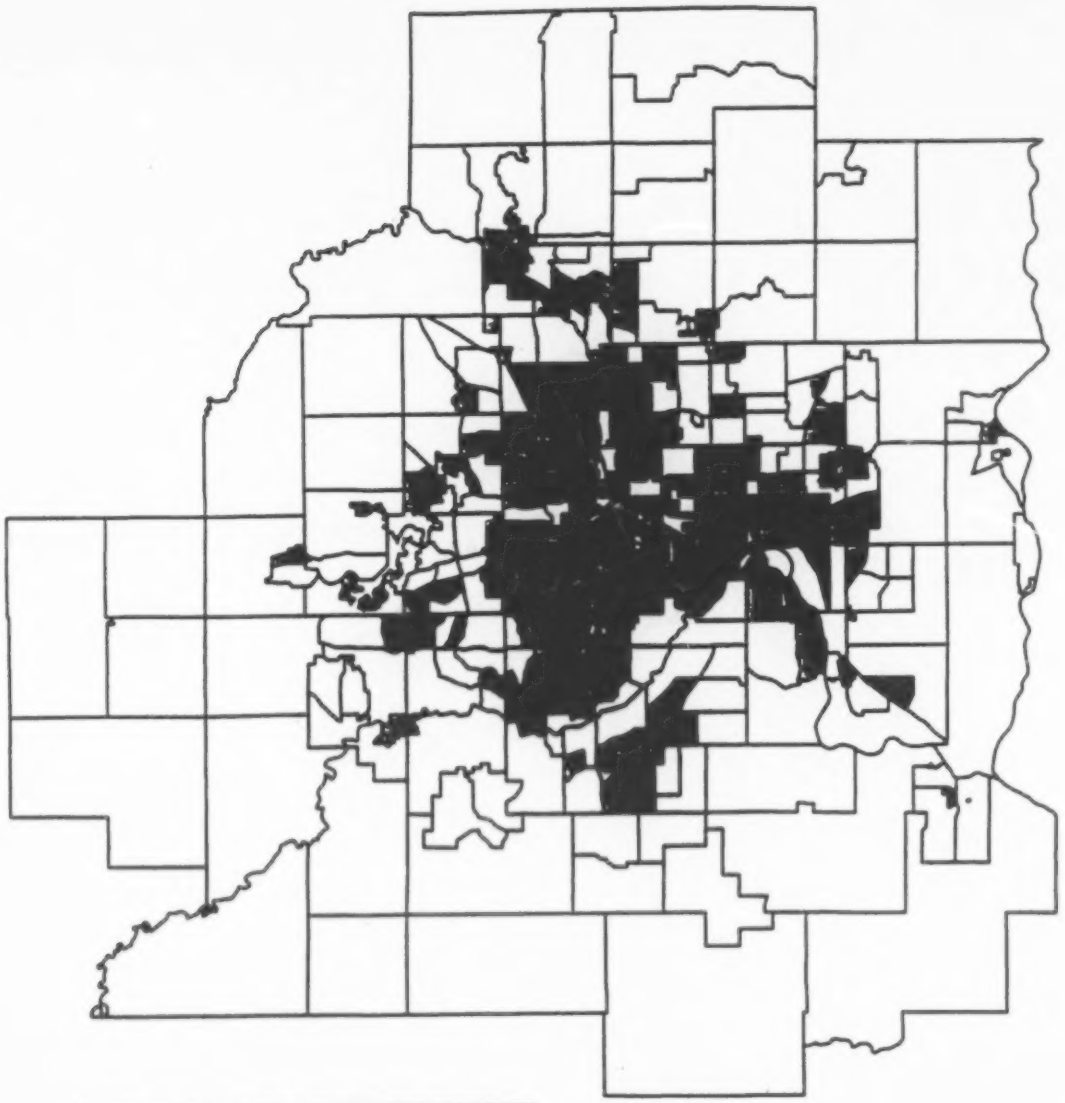
Household Density

by Census Tract, 1990



Households per Square Mile

■	2400 to 14600 (161)
■	1300 to 2400 (140)
■	700 to 1300 (123)
□	0 to 700 (182)

Twin Cities 7-County Metro Area
Housing

5/9/96

Source: 1990 U.S. Census

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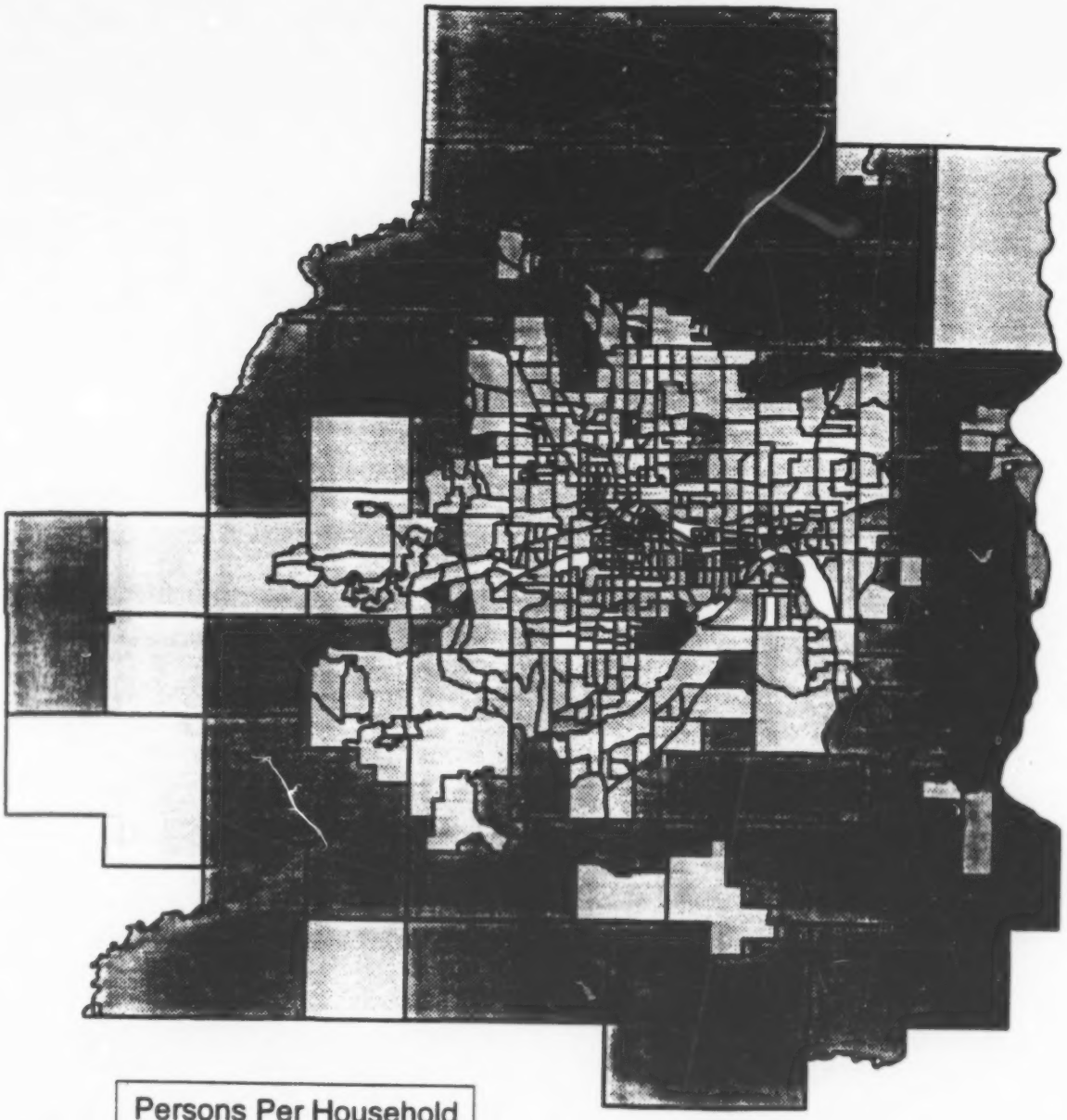
Persons Per Household

by Census Tract, 1990



Persons Per Household	
4 to 8	(3)
3 to 4	(119)
2 to 3	(436)
0 to 2	(48)

Twin Cities 7-County Metro Area
Housing

5/9/96

Source: 1990 U.S. Census

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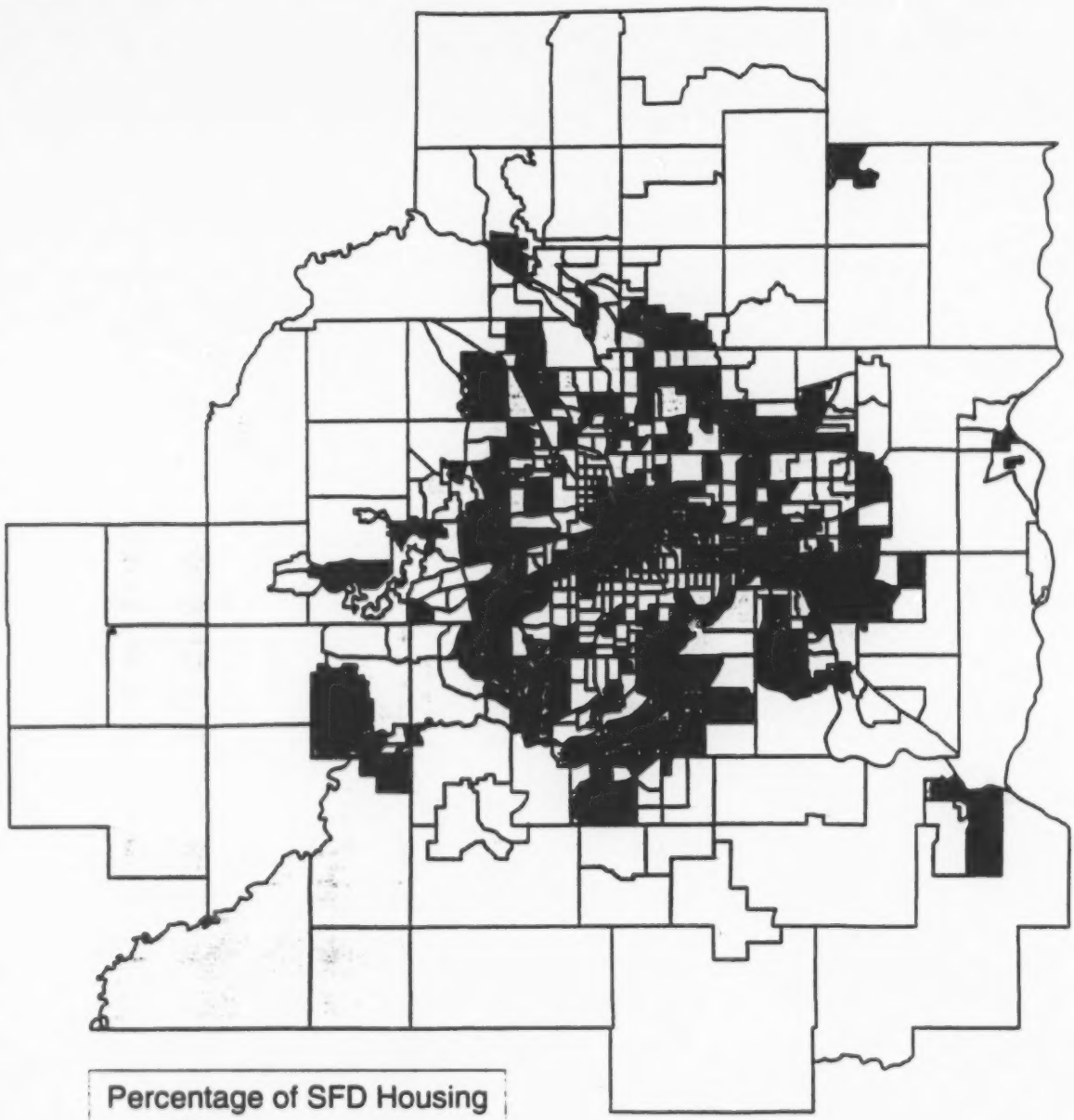
Single-Family Detached Housing

by Census Tract, 1990



Percentage of SFD Housing

- 0 to 20 (71)
- 20 to 40 (77)
- 40 to 60 (140)
- 60 to 80 (177)
- 80 to 100 (141)

Twin Cities 7-County Metro Area
Housing

5/9/96

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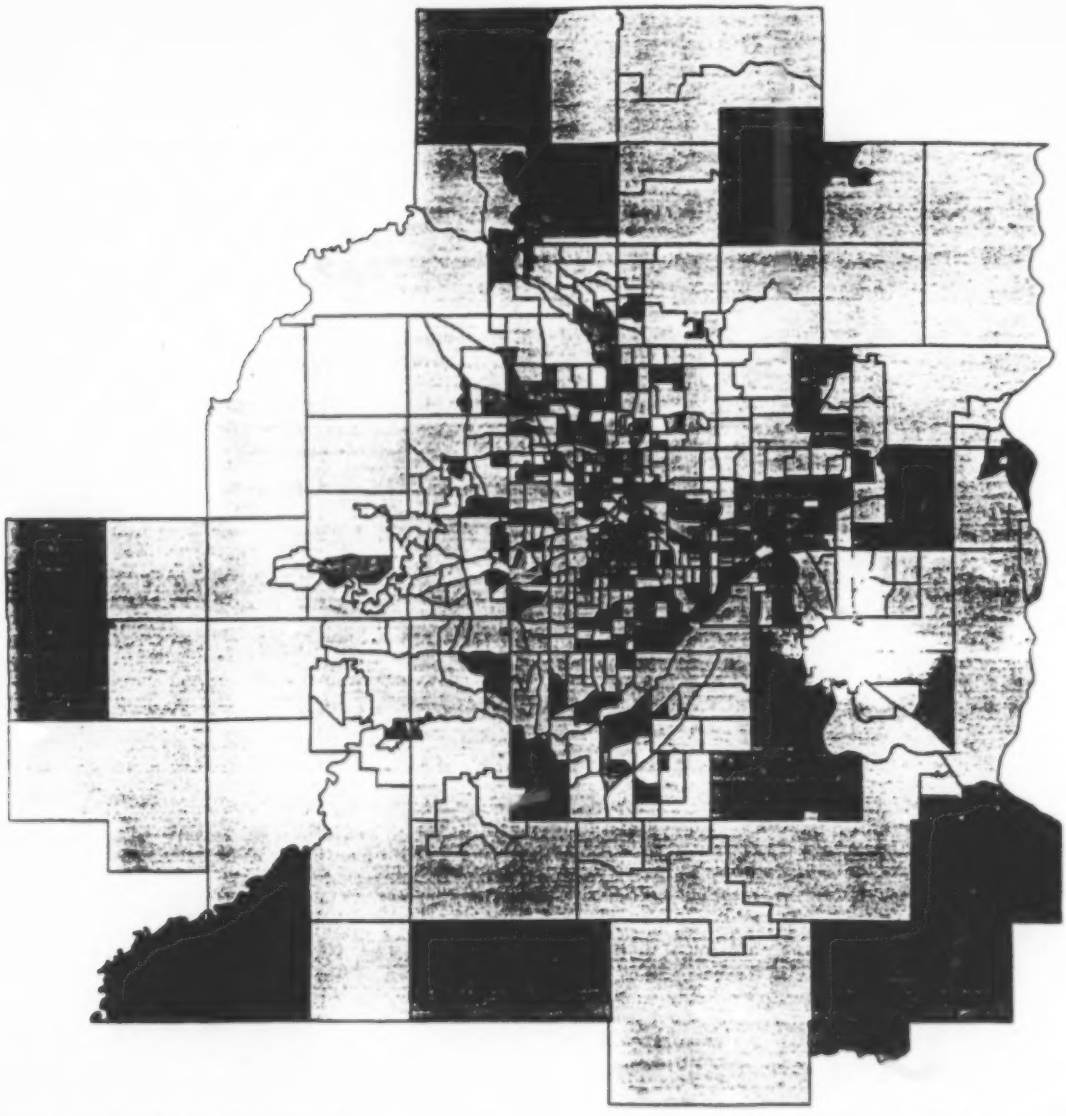
Source: 1990 U.S. Census

Percentage of Children of Color in Poverty

By Census Tract



Minneapolis-St. Paul Metropolitan Area

Source: 1990 U.S. Census. STFA1, STFA3

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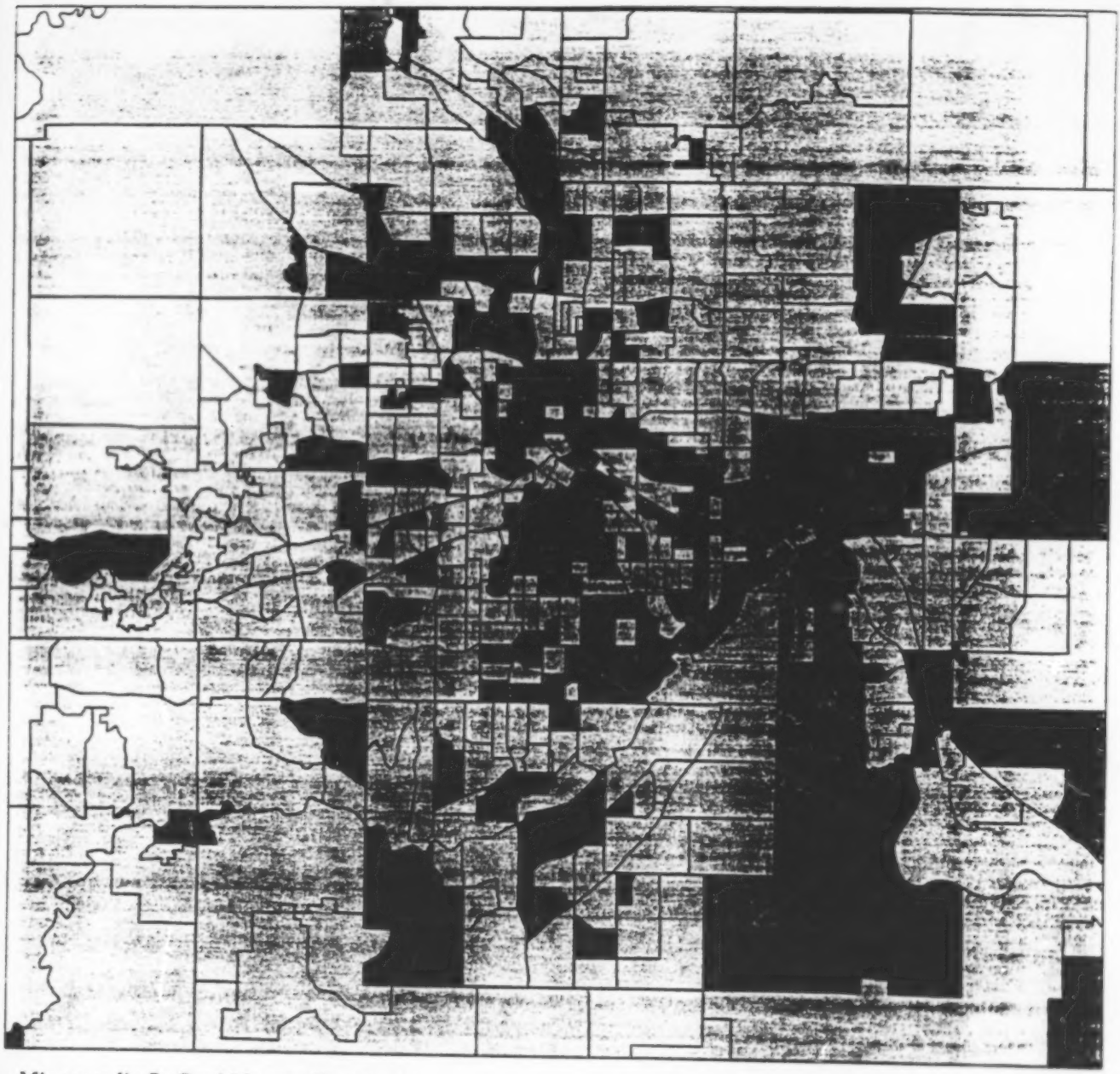
Percentage of Children of Color in Poverty
(M=23.06, SD=26.02)

- 75.11 to 100 (28)
- 49.09 to 75.1 (86)
- 23.07 to 49.08 (136)
- 0 to 23.06 (356)

Percentage of Children in Poverty

By Census Tract



Minneapolis-St. Paul Metropolitan Area

Source: 1990 U.S. Census. STFA1, STFA3

Percentage of Children of Color in Poverty
(M=23.06, SD=26.02)

- 75.11 to 100 (28)
- 49.09 to 75.1 (86)
- 23.07 to 49.08 (136)
- 0 to 23.06 (356)

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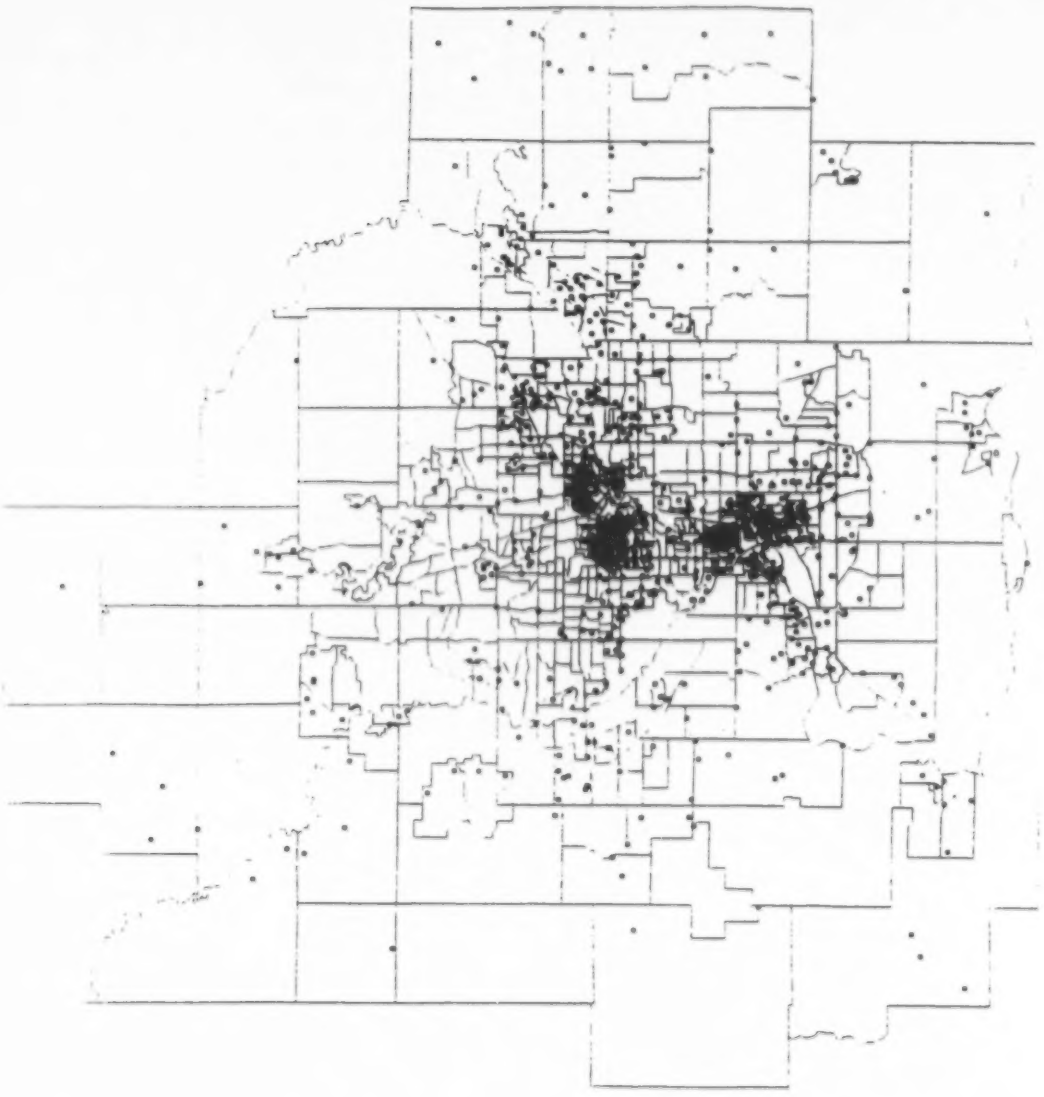
Twin Cities Metro Area: Distribution of Children in Poverty



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Twin Cities Metro Area
Children in Poverty
1 Dot = 40

Source: 1990 US Census

Twin Cities Metro Area: Distribution of Non-White School Age Children in Poverty by Tract

Non-White School Age Children in Pove

1 Dot = 1

Source: 1990 US CENSUS

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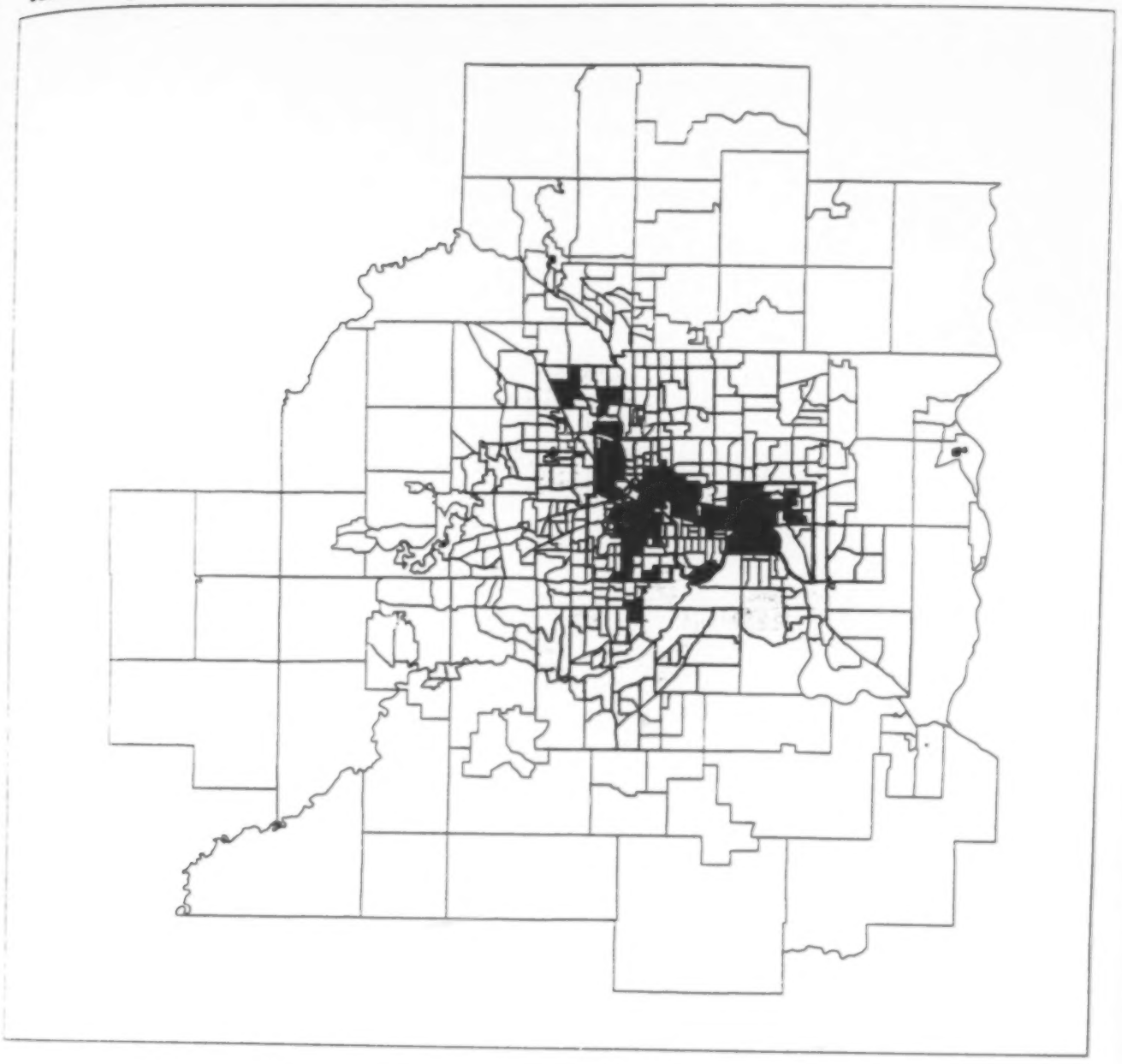
Percentage Minorities in Seven County Metropolitan Area by Census Tract



Source: 1990 US Census

Percent Minorities	
53.2 - 93.7	(32)
27.3 - 51.9	(29)
11.3 - 27.2	(75)
5.0 - 11.2	(182)
0.0 - 4.9	(287)

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Percentage of Families in Poverty by Std. Dev.

by Census Tract

Minneapols - Saint Paul Metropolitan Area *Source: 1990 US Census*

% of Families in Poverty
M=8.07, SD=11.83

43.561	to	55.39	(17)
31.731	to	43.56	(23)
19.91	to	31.73	(29)
8.071	to	19.9	(85)
0	to	8.07	(452)

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